

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

ISLAND TRAVEL & TOURS LTD. CO., a
Florida corporation,

Plaintiff,

vs.

Case No.:

CUBA TRAVEL SERVICES, INC., a
Foreign corporation,

Defendant.

COMPLAINT

The Plaintiff, ISLAND TRAVEL & TOURS LTD. CO. (“ISLAND TRAVEL”) by and through its undersigned counsel, herewith files its Complaint against the Defendant, CUBA TRAVEL SERVICES, INC. (“CTS”), and states:

JURISDICTION AND VENUE

1. Plaintiff brings this action for treble damages and injunctive relief for violations of the federal antitrust laws, 15 U.S.C.A. §§ 2 and 15, and for violations of Florida state law. This Court has jurisdiction over this action pursuant to 15 U.S.C.A. § 4, 28 U.S.C.A. §§ 1331 and 1337 and under the principles of supplemental jurisdiction, 28 U.S.C.A. § 1367.

2. Venue is proper in the Southern District of Florida under 15 U.S.C.A. § 22 and 28 U.S.C.A. § 1391, as CTS’s transacts and has its principal place of business is in Miami-Dade County, Florida.

FACTS

3. ISLAND TRAVEL is a Florida corporation conducting business in Miami-Dade County, Florida.

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4. CTS is a California corporation with its principal place of business in Miami-Dade County, Florida.

5. Jurisdiction and venue are proper before this Court as both ISLAND TRAVEL and CTS are conducting business in Miami-Dade County and the actions giving rise to this claim were orchestrated in Miami-Dade County.

6. ISLAND TRAVEL is certificated by the United States Department of Treasury, Office of Foreign Assets Control and the United States Department of Transportation to sell tickets and arrange travel for consumers between certain cities in the United States and certain cities in Cuba.

7. CTS is also certificated by the United States Department of Treasury, Office of Foreign Assets Control and the United States Department of Transportation to sell tickets and arrange travel for consumers between certain cities in the United States and certain cities in Cuba.

8. ISLAND TRAVEL and CTS are direct competitors in the highly-regulated market of selling tickets and arranging travel for consumers between certain cities in the United States and certain cities in Cuba.

9. ISLAND TRAVEL and CTS each market their respective services to consumers in the State of Florida.

10. After months of effort to obtain the requisite approvals from various agencies of the United States Government, in November 2011, ISLAND TRAVEL began operating charter flights twice weekly between Tampa International Airport, Tampa, Florida (“TPA”) and Jose Marti International Airport, Havana, Cuba (“HAV”) and vice versa.

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11. In or before December 2013, CTS began operating charter flights thrice weekly between TPA and HAV and vice versa.

12. Both ISLAND TRAVEL and CTS are required to pay the following fixed fees on a per passenger basis for each passenger transported between TPA-HAV-TPA as mandated by the Government of the United States and the Government of Cuba:

United States' Passenger Fees:	\$58.90 per passenger
HAV Airport Landing Fees:	\$148.00 per passenger
Cuba Required Medical Insurance Fee:	\$46.00 per passenger

13. ISLAND TRAVEL and CTS are each required by the Government of the United States and the Government of Cuba to pay the fees referenced in paragraph 13 above on a per passenger basis in the aggregate amount of \$252.90 per passenger for each passenger transported between TPA and HAV (the "Government Fees").

14. In addition to the Government Fees, both ISLAND TRAVEL and CTS must charter aircraft from United States certificated air carriers, since neither is a certificated United States air carrier, in order to transport passengers between TPA and HAV, and vice versa.

15. In order to perform the flights between TPA and HAV, ISLAND TRAVEL solicited and received a quote from MN Airlines, LLC d/b/a Sun Country Airlines ("Airlines"), pursuant to which Airlines would perform HAV-TPA-HAV flights for ISLAND TRAVEL utilizing a Boeing 737-800 aircraft with a maximum passenger capacity of 162 revenue passenger seats in exchange for the sum of \$25,608.00 per roundtrip flight, HAV-TPA-HAV.

16. Assuming that each and every flight between HAV-TPA-HAV chartered by ISLAND TRAVEL from Airlines was fully booked, which is rarely the case, the charter cost of the aircraft would be \$158.07 per passenger (Aircraft Charter Costs from Airlines at \$25,608.00

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divided by 162 available passenger seats equals \$158.07 aircraft charter cost per seat) (the “Aircraft Seat Cost”).

17. The sum of the Government Fees and the Aircraft Seat Cost is \$410.97.

18. Assuming ISLAND TRAVEL sold all of the available seats on the aircraft it chartered from Airlines, ISLAND TRAVEL’s direct cost for flights between TPA and HAV, and vice versa, would be \$410.97 per passenger (“Islands’ Flight Costs”).

19. CTS distributed a price list for its flights between TPA and HAV, and vice versa, to be performed during the month of December 2013 utilizing a B737-800 aircraft from Airlines (the “CTS December Price List”) to various travel agents authorized to sell tickets between cities in the United States and cities in Cuba.

20. The CTS December Price List reflects CTS roundtrip ticket prices TPA-HAV-TPA between \$399.00 per passenger and \$529.00 per passenger depending on the departure date; furthermore, CTS is paying a commission on each ticket sold to the authorized travel agents of up to \$50 but no less than \$30.

21. CTS distributed a price list for its flights between TPA and HAV, and vice versa, to be performed during the month of January 2014 utilizing a B737-800 aircraft from Airlines (the “CTS January Price List”) to various travel agents authorized to sell tickets between cities in the United States and cities in Cuba.

22. The CTS January Price List reflects CTS roundtrip ticket prices TPA-HAV-TPA between \$339.00 per passenger and \$399.00 per passenger depending on the departure date; furthermore, CTS is paying a commission on each ticket sold to the authorized travel agents of up to \$50 but no less than \$30.

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22. Commencing in December 2013, CTS sold tickets for air travel between TPA and HAV below its operating costs in an attempt to drive ISLAND TRAVEL, its direct competitor, out of the TPA-HAV-TPA market so that it could enjoy a monopoly on air travel between TPA and HAV and vice versa.

23. As a direct result of CTS's practice of selling flights between TPA and HAV, and vice versa, below its operating costs, authorized ticket agents that sell tickets for both ISLAND TRAVEL and CTS, began diverting passengers from ISLAND TRAVEL flights to CTS flights.

24. As evidenced by the table below, ISLAND TRAVEL sold less passenger tickets between TPA and HAV, and vice versa, when CTS began its predatory pricing practice:

Month	Number of Flights	Total Passengers	Aircraft Load Factor	Percentage decrease in passengers since December 2013
December 2013	34	3241	74%	N/A
January 2014	41	2258	37%	-37%
February 2014	36	2283	42%	-22%
March 2014	40	3283	54.7%	-19.3%
April 2014	38	2641	46.3	-27.7%
May 2014	0	0	0%	-74%

25. As a direct result of CTS selling tickets between TPA and HAV, and vice versa, below costs and offering higher ticket sales commissions to authorized travel agents, further increasing CTS's flight operating costs, ISLAND TRAVEL's tickets sales decreased and ISLAND TRAVEL was forced to cease operations with respect to flights between TPA and HAV, and vice versa.

**COUNT I
(ATTEMPT TO MONOPOLIZE)**

26. ISLAND TRAVEL reaffirms and re-alleges the allegations set forth in paragraphs 1 through 25 hereinabove as if set forth herein.

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27. Section 2 of the Sherman Act broadly prohibits monopolization, attempted monopolization, and conspiracies to monopolize. Section 2 provides that “[e]very person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several States, or with foreign nations, shall be deemed guilty of a felony.” 15 U.S.C. § 2 (2004).

28. CTS has intentionally and willfully attempted to monopolize the charter flights between TPA and HAV, and vice versa, by way of the acts set forth above.

29. There is a dangerous probability that CTS’s attempts to monopolize said charter flights will be successful and CTS will recoup its below-cost losses, as evidenced by the fact ISLAND TRAVEL has ceased operation of all flights between TPA and HAV due to CTS’s actions.

30. As a direct and proximate result of the aforementioned conduct, ISLAND TRAVEL has been injured in its business. ISLAND TRAVEL has been deprived of the benefit of free competition in the market segment regarding charter flights between TPA and HAV, and vice versa, has been squeezed in price, and has incurred decreased profits.

31. As a direct and proximate result of the aforementioned conduct, ISLAND TRAVEL has suffered actual damages in an amount to be determined at trial including, *inter alia*, loss of revenue, loss of profits, and increased operating costs.

WHEREFORE, ISLAND TRAVEL demands judgment be entered against CTS for damages, injunctive relief enjoining CTS from selling airline tickets below costs, reasonable attorneys’ fees and costs, and any such further relief as is just, equitable and proper.

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COUNT II
(UNFAIR AND DECEPTIVE TRADE PRACTICE)

32. ISLAND TRAVEL reaffirms and re-alleges the allegations set forth in paragraphs 1 through 25 hereinabove as if set forth herein.

33. This is an action against CTS pursuant to the provisions of the Florida Deceptive and Unfair Trade Practices Act, Chapter 501, Part II, Florida Statutes, *et seq.*

34. ISLAND TRAVEL, a legitimate business enterprise, is a “Consumer” as defined in section 501.203(7), Florida Statute.

35. CTS engages in “Trade or Commerce” with the meaning of section 501.203(8), Florida Statute.

36. CTS engaged in unfair methods of competition by selling tickets between TPA and HAV, and vice versa, below costs.

37. ISLAND TRAVEL has suffered damages as a result of CTS’s unfair and deceptive trade practices.

38. ISLAND TRAVEL is entitled to a declaration from this Court that CTS’s acts and practices violates Chapter 501, Part II, Florida Statutes, *et seq.*, and to a judgment for all other relief authorized by Chapter 501, Part II, Florida Statutes, *et seq.*

WHEREFORE, ISLAND TRAVEL demands judgment be entered against CTS for damages, injunctive relief enjoining CTS from selling airline tickets below costs, civil penalties pursuant to Fla. Stat. 501.2075, reasonable attorneys’ fees and costs pursuant to Fla. Stat. 501.2105, and any such further relief as is just, equitable and proper.

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COUNT III
(TORTIOUS INTERFERENCE WITH EXISTING BUSINESS RELATIONSHIPS)

39. ISLAND TRAVEL reaffirms and re-alleges the allegations set forth in paragraphs 1 through 25 hereinabove as if set forth herein.

40. ISLAND TRAVEL utilized a network of authorized travel agents to sell seats on its charter flights between TPA and HAV, and vice versa, to traveling consumers.

41. CTS and ISLAND TRAVEL use many of the same authorized travel agents to sell seats on their respective charter flights.

42. CTS had knowledge that ISLAND TRAVEL was utilizing many of the same authorized travel agents it was using to sell seats on its charter flights between TPA and HAV, and vice versa.

43. Knowing that the authorized travel agents would divert prospective passengers from ISLAND TRAVEL's charter flights to CTS's charter flights if CTS reduced its ticket prices and increased commissions to the authorized travel agents, CTS intentionally and unlawfully reduced its ticket prices below its operating costs and increased commission to the authorized travel agents for this purpose.

44. As a direct result of the tortious actions of CTS, authorized travel agents diverted sales from ISLAND TRAVEL to CTS.

45. ISLAND TRAVEL has suffered damages as a result of the actions of CTS.

WHEREFORE, ISLAND TRAVEL demands judgment be entered against CTS for damages, reasonable attorneys' fees, and costs and any such further relief as is just, equitable and proper.

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COUNT IV
(ATTEMPT TO MONOPOLIZE UNDER FLORIDA STATUTE CH. 542)

46. ISLAND TRAVEL reaffirms and re-alleges the allegations set forth in paragraphs 1 through 25 hereinabove as if set forth herein.

47. Section 542.19, Florida Statute, provides that “[i]t is unlawful for any person to monopolize, attempt to monopolize, or combine or conspire with any other person or persons to monopolize any part of trade or commerce in this state.”

48. ISLAND TRAVEL and CTS are direct competitors in the highly regulated market of selling tickets and arranging travel for consumers between certain cities in the United States and certain cities in Cuba.

49. CTS has intentionally and willfully attempted to monopolize the charter flights between TPA and HAV, and vice versa, by way of the acts set forth above.

50. There is a dangerous probability that CTS’s attempts to monopolize said charter flights will be successful and CTS will recoup its below-cost losses, as evidenced by the fact ISLAND TRAVEL has ceased operation of all flights between TPA and HAV due to CTS’s actions.

51. As a direct and proximate result of the aforementioned conduct, ISLAND TRAVEL has been injured in its business and the consumer has been harmed by the loss of reduced output of charter flights between TPA and HAV.

52. Upon information and belief, CTS now has or will raise its ticket prices due to reduced competition in a manner resulting in raised prices to consumers.

53. As a direct and proximate result of the aforementioned conduct, ISLAND TRAVEL has suffered actual damages in an amount to be determined at trial including, *inter alia*, loss of revenue, loss of profits, and increased operating costs.

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WHEREFORE, ISLAND TRAVEL demands judgment be entered against CTS for damages, injunctive relief enjoining CTS from selling airline tickets below costs, reasonable attorneys' fees and costs, and any such further relief as is just, equitable and proper.

Dated: October 23, 2014.

Respectfully submitted,

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