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UNITED STATES DISTRICT COURT, WESTERN DISTRICT OF WASHINGTON AT SEATTLE

PENNY STAFFORD, DBA BELVI COFFEE AND TEA EXCHANGE, INC., on behalf of herself and all others similarly situated, Plaintiff, v. STARBUCKS CORPORATION, Defendant.	No. CV 06-1382 JCC **CLASS ACTION COMPLAINT FOR VIOLATION OF THE SHERMAN ACT**

Plaintiff Penny Stafford, doing business as Belvi Coffee and Tea Exchange, Inc., by and through her attorneys, brings this action on behalf of herself and all other similarly situated persons, companies and entities ("Class Members") and hereby alleges upon personal knowledge and belief as to her own acts, and upon information and belief (based on investigation by Plaintiff Belvi and counsel) as to all other matters, as to which allegations Plaintiff believes substantial evidentiary support exists or will exist after reasonable opportunity for further investigation and discovery of evidence, as follows:

I. INTRODUCTION

1. This action arises from the insatiable and unchecked ambition of the world's largest multinational chain of specialty coffee shops to continue to dominate the market for

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specialty coffee. In 2005, retail specialty coffeehouse storefront businesses in the United States totaled $8.3 billion in sales. By far the dominant player and monopolist in the market for specialty coffee is Starbucks. It had 165 stores when it went public in 1992. As of today, Starbucks has 5,393 company operated coffeehouses in the United States (including Hawaii). It also has 2,486 licensed storefronts that are found in prime locations such as grocery chains, bookstores such as Barnes & Noble, and airports.

2. Additionally, Starbucks products are sold in 30,000 outlets including colleges, grocery stores, and warehouse clubs. Within the next decade, Starbucks' goal is 25,000 stores. In 2005 alone, Starbucks generated over $6.3 billion in sales. The company's United States operations represented 81% of its total net revenues, which increased by 21% over Fiscal Year 2004. Between the years 2000 and 2005, the specialty coffeehouse industry experienced 42% revenue growth. Starbucks coffeehouse growth during that same period was 180%, clinching all new growth and taking a huge share of existing business from the independents.

3. From 2003 through 2005, Penny Stafford, doing business as Belvi Coffee and Tea Exchange, Inc., tried to enter the specialty coffee business in the highly sought after retail spaces that are located in Seattle and Bellevue's Class A high-rise commercial office buildings. But her entry was blocked because, through the unlawful use and abuse of its monopoly power in this market, Starbucks foreclosed competition in the market for specialty coffeehouse drinks through various actions including a series of exclusive lease agreements it had entered into with the owners of the Puget Sound area's largest commercial office buildings in both Seattle and Bellevue. Often, in exchange for lease payments higher than the fair market value, the property managers were prohibited from permitting any other business making espresso drinks or specialty coffee to operate in or around the same building, despite the existence of demand in those locations. In part, because of these exclusionary leasing agreements, Starbucks saturates the relevant Seattle market with 59 stores within the two-mile radius of Seattle's downtown core, and also dominates the relevant Bellevue Market as well.

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4. Not satisfied with dominating the highly prized commercial office retail spaces through exclusive leases, Starbucks retaliated when Ms. Stafford found Class A space in City Center Bellevue from which to operate an espresso shop. Starbucks employees were directed to stand at the entrance of Ms. Stafford's business for the purpose of handing out free Starbucks drinks. They also solicited business from Stafford's customers sitting at tables outside her store entrance. The predatory and retaliatory actions contributed to Ms. Stafford having to close her shop within four months of opening.

5. Starbucks has furthered solidified its market dominance by buying two of its largest competitors in Seattle, Seattle's Best Coffee and Torrefazione Italia, in 2003, and then closed many of these stores.

6. Starbucks' abuse of its monopoly power adversely affects not only businesses such as Plaintiff's, but forecloses competition thereby limiting consumer choice.

7. Ms. Stafford brings this action for injunctive relief on her own behalf and for the class of similarly situated independent specialty coffeehouse owners who have been foreclosed from effectively entering the commercial office building retail markets in Seattle and Bellevue because of Starbucks' exclusive and predatory practices. Plaintiff seeks a rescission of the exclusive leasing agreements and an injunction prohibiting Starbucks from entering into such agreements.

II. JURISDICTION AND VENUE

8. The Court has subject matter jurisdiction under 28 U.S.C. § 1331 (federal question) and 28 U.S.C. § 1337 (commerce and antitrust regulation), as this action arises under Section 2 of the Sherman Act, 15 U.S.C. § 2.

9. Venue is proper because Defendant conducts substantial business in the Western District of Washington.

III. PARTIES

10. Plaintiff Penny Stafford, doing business as Belvi Coffee and Tea Exchange, Inc.

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(a Washington State corporation), resides in Washington State.

11. Defendant Starbucks is a Washington corporation with its headquarters in Seattle, Washington.

IV. FACTUAL BACKGROUND

A. Starbucks and the Specialty Coffee Industry

12. Defendant Starbucks operates specialty retail stores engaged in the sale of coffee, tea, espresso beverages, whole bean coffee, related whole bean hardware items, and selected food items, each of which operates under the name "Starbucks Coffee."

13. Specialty coffee is broadly defined as premium or gourmet coffees, including drinks produced using a commercial espresso piece (machine) which forces water through ground coffee in a portafilter, producing strong coffee known as espresso. The consumption of specialty coffees has been rising steadily in the United States with the percentage of Americans drinking specialty coffee daily increasing from 9% to 16% between 2000 and 2004. 60% of Americans drink specialty coffee on an occasional basis. The total market for the specialty coffee retail business now exceeds $8 billion annually.

14. The most profitable segment of the specialty coffee business is establishments that offer "espresso drinks." In the industry, such establishments are referred to as those having an "espresso piece," *i.e.*, a commercialized piece of equipment that makes espresso or espresso-based drinks.

15. Specialty coffeehouses, offering espresso drinks as the primary sales item, include freestanding stores, kiosks, and coffee carts, stands, as well as those located in office buildings and malls.

16. For more than a decade, Starbucks has demonstrated an insatiable appetite for growth and attaining dominance in the specialty coffeehouse market. According to one recent consumer survey, "[m]arket growth is largely driven by behemoth Starbucks," which has 73% of the entire coffeehouse market's retail sales as of the end of 2005. Starbucks' system-wide sales

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have grown at a 26% CAGR (compounded annual growth rate) from 2000-05, coming both from same-store sales growth and unit expansion. Starbucks' increased market share from 2003-2005 matches the decreased share of the independent coffeehouse market. (Mintel Group, February 2006 report, at 7, 23).

17. Starbucks has now attained monopoly power in the specialty coffeehouse segment of the market. Through the use of exclusive retail lease agreements often paying higher than market value rents in highly-coveted commercial office buildings, clustering of its retail stores, and buying up competitors, Starbucks has capitalized on its monopoly power to exclude competition, including the Plaintiff. The company now has 59 Starbucks and 5 Seattle Best Coffee stores within 2 miles of the core area of downtown Seattle. The intent and effect of this strategy is not to grow or develop business resulting from a superior product nor to achieve efficiencies or economies of scale, but to eliminate any competitors who may offer consumers an alternative product.

B. Relevant Markets

18. The relevant product market is specialty coffeehouse based drinks, which feature (but are not limited to) beverages that are made with use of commercial espresso pieces, and selling espresso and associated drinks such as drip coffee made with premium roasting coffee beans such as the Arabica bean.

19. The relevant geographic market for Count I of this complaint is the area centered on Seattle's central business district and downtown office core that includes high-rise office buildings, and high-employment densities. According to the Seattle City Clerk's office, the Seattle central business district is bounded by Olive Way on the north, Cherry Street on the south, Elliott Bay on the east, and Interstate-5 on the west (downtown "central business district" map at http://en.wikipedia.org/wiki/Image:Seattle_downtown_neighborhoods.jpg). The relevant geographic market for Count II of this complaint is the area centered on Bellevue's central business district and downtown office core that includes high-rise office buildings and high-

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employment densities. According to the City of Bellevue, downtown Bellevue extends from Interstate-405 on the east to 100th Avenue NE on the west, and from NE 12th Street on the north to just south of Main Street on the south.

C. Plaintiff's Efforts to Enter the Geographic Market

20. A former commercial real estate agent, Plaintiff Penny Stafford has long desired to own and operate her own specialty coffeehouse that offered espresso drinks. She was well-funded and well-connected in the Puget Sound commercial real state market. Using her real estate contacts, she began to look for prime (Class "A") retail space from which to run her specialty coffeehouse. But after more than a year of searching, she had come to realize that her entry into the specialty coffeehouse market was being barred by various acts of Starbucks including but not limited to an aggressive plan of the Defendant to frequently pay higher-than-market value prices for prized commercial office locations in exchange for exclusivity. The exclusive lease agreements prohibit the lessors (*i.e.* – the building managers) from leasing to any other retailers who wish to operate "espresso pieces" on the same premises as well as prohibiting existing independent coffeehouses from renewing their leases.

21. This practice is in keeping with Starbucks' business model that is predicated on an established principle of success in the real estate industry, namely, location. According to a 2005 survey sponsored by the Specialty Coffee Association of America ("Mintel Report"), 70% of adults surveyed identified "coffee quality and convenient location" as important coffeehouse characteristics. Only 26% of U.S. consumers identified "price" as an important characteristic. In the west, 74% cited location as the #1 factor. Eliminate competition, such as Penny Stafford who offered a coffee product preferred by many customers, and location remains the single most important characteristic for coffeehouse customers.

22. Starbucks' emphasis on store location is apparent from statements appearing in newspapers. A company spokesperson explained why stores are often clustered within a few blocks or even across the street from one another: "Starbucks builds these stores where

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customers want us to be. Because we are part of our customers' daily routine, often crossing a street could interrupt that routine."

23. The model to locate stores around the coffee habits and traffic routines of customers such as office workers is touted in Starbucks' most recent annual report: "Starbucks retail stores are typically located in high-traffic, high-visibility locations. Because the Company can vary the size and format, its stores are located in or near a variety of settings, including downtown and suburban retail centers, office buildings and university campuses. While the Company selectively locates stores in shopping malls, it focuses on locations that provide convenient access for pedestrians and drivers." The Annual Report goes on to state that "Starbucks strategy is to reach customers where they work, travel, shop and dine …."

24. The business model is built around embedding itself into the routines and habits of potential customers. According to a recent Business Week article entitled "Ruthless Focus on the Customer," 80% of Starbucks revenue comes from customers who visit their stores an average of 18 times a month. In no other setting is a typical customer's routine more regimented than in commercial office buildings, where busy workers are often on short coffee breaks. The Mintel Report indicates that 85% of those surveyed use coffeehouses to purchase coffee to go.

25. Commercial office buildings are classified according to a combination of location and physical characteristics. These classes represent a subjective quality rating of buildings which reflects the competitive ability of each building to attract similar types of tenants. A combination of factors including rent, building finishes, system standards and efficiency, building amenities, location/accessibility and market perception are used as relative measures.

26. Building amenities include services, such as food facilities, that are helpful to either office workers or office tenants and whose presence is a convenience within a building or building complex. According to the Urban Land Institute, a noted institute on commercial land uses, Class A space can be characterized as buildings that have excellent location and access, attract high quality tenants, and are managed professionally. Class A buildings have high quality

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standard finishes, state of the art systems, exceptional accessibility and a definite market presence. Of most significance to Starbucks is the high volume of foot traffic in the retail areas of Class A commercial buildings with a customer base consisting of office workers that, by its very nature, presents a veritable captive audience as opposed to the discretionary visits of shopping mall customers. Thus, in the relevant geographic markets (the business cores of downtown Seattle and Bellevue) one method by which Starbucks harms competition is by locking up Class A buildings with exclusive lease agreements.

27. A growing number of metropolitan Class A high-rises are owned by REITs (Real Estate Investment Trusts), publicly traded companies that own and operate commercial real estate as their primary business. First traded in 1960, they have grown in number to approximately 200 today, and to $400 billion in market capitalization. Five REITs own the majority of Seattle high rises. The largest is Equity Office Properties ("EOP"), which owns 35% of the high rise buildings nationally. Using data from the 2006 Seattle Central Business District ("CBD") Office Report, EOP owns and manages approximately 3,863,345 square feet of those Class A office buildings in the Seattle Central Business district with square footages of 250,000 or more. The shares of the other major REITs are as follows: Hines: 2,397,552 square feet; Washington Holding: 1,783,959 square feet; Wright, Runstad & Company: 838,475; Bentall Capital: 1,374,677 square feet.

28. In Bellevue, EOP owns five of nine Class A office buildings that have square footage of 250,000 or more. These five office buildings have 2,048,827 square feet or 61% of the total 3,385,737 square feet in this group. Starbucks has exclusivity to all EOP properties. Starbucks also has exclusivity in the 305,000 square foot Civica building. Thus, Starbucks enjoys exclusivity over ***69%*** of the area in Class A buildings of greater than 250,000 square feet that are located in downtown Bellevue.

29. Beginning in 2003, Penny Stafford had been in frequent contact with several REITs, most notably EOP. She wanted to own and operate a specialty coffeehouse in the retail

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space of a Class A office building with greater than 250,000 square feet in the Seattle central business district. (According to the Downtown Seattle Association, 49.4% (230,000) employees in Seattle work downtown. 45% of the office market for the Puget Sound region is located downtown, or approximately 36.8 million square feet of office space.) Based on formulas using widely accepted data from the commercial real estate business and municipal planning departments, Ms. Stafford concluded that it requires at least 250,000 square feet to produce the potential for selling 330 specialty coffee drinks per day, which is close to the break even point for a small specialty coffeehouse. She also concluded that operating her business from the fringe areas (outside the central business cores) and comprised essentially of mid-rises, or in Class "B"[1] buildings were not viable locations because of a substantially smaller tenant base from which to draw customers, further exacerbated by vacancy rates nearly double that found in Class A buildings located in the downtown business cores. Managers of newer high-rises lease to a greater number of Fortune 500 companies with employees having higher disposable incomes.

30. Proximity to the office worker customer base is critical to the viability of independent coffeehouses. Again, even Starbucks acknowledges that "crossing a street" may be too far to go for coffee. For those reasons, a specialty coffeehouse in a Class A fringe building or Class B building does not compete for customers from nearby newer high rises because most workers simply cannot make it back and forth in time during their allotted coffee breaks. A customer base that prizes convenience will not patronize a coffee store a few blocks from the office where it would require parking, walking to the shop, ordering the coffee, walking back to the garage (and perhaps paying for parking), getting back in the car and then driving back to the office.

31. In June 2004, EOP informed Ms. Stafford that it was entering into exclusive lease agreements with Starbucks for all of its office buildings nationwide, including Seattle and

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[1] "B" buildings compete for a wide range of users with rents in the average range for the area. Building finishes are fair to good for the area and the systems are adequate, but the buildings do not compete with Class A at the same price.

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