

STATE OF MAINE
KENNEBEC, ss.

SUPERIOR COURT
CIVIL ACTION
DOCKET NO. CV96-295

STATE OF MAINE,)

Plaintiff)

v.)

AMERICAN SKIING COMPANY,)

Defendant)

CONSENT ORDER

REC'D & FILED
NANCY A. DESJARDIN
JUN 27 1996
CLERK OF COURTS
KENNEBEC COUNTY

WHEREAS, Plaintiff, State of Maine, having filed its Complaint herein on June 27, 1996, and Plaintiff and Defendant, by their respective attorneys, having consented to the entry of this Consent Order without trial or adjudication of any issue of fact or law herein and without this Consent Order constituting any evidence against or admission by any party with respect to any such issue;

NOW, THEREFORE, before the taking of any testimony and without trial and adjudication of any issue of fact or law herein, and on consent of the parties hereto, it is hereby ordered, adjudged and decreed as follows:

I. JURISDICTION

This Court has jurisdiction over the subject matter of this action and over each of the parties hereto. The Complaint states a claim upon which relief may be granted against Defendant under 10 M.R.S.A. §§1102-A & 1104.

II. DEFINITIONS

In this Consent Order, the following definitions shall apply:

A. "Department" shall mean the Department of the Attorney General for the State of Maine.

B. "Covered Ski Ticket" means a ticket for skiing for all or a portion of one day at Sunday River or Sugarloaf, including a posted-price one-day (including a portion of one day) ticket, a one day-ticket purchased or redeemed with a coupon or complementary pass, a season pass for a skier under age 18, a corporate one-day ticket and a one-day group ticket. Covered Ski Ticket shall not mean or include any ticket for two or more consecutive days of skiing (or for three or more days within one week, whether consecutive or not), a season pass for a skier over age 18, or any ski-lodging package.

C. "Covered Ski Ticket Ratio" shall mean the ratio, expressed as a percentage, that the Resident Covered Ski Ticket Yield has to the Non-Resident Covered Ski Ticket Yield.

D. "Base Covered Ski Ticket Ratio" means the Covered Ski Ticket Ratio for the 1995-96 Ski Season.

E. "Resident Covered Ski Ticket Yield" shall mean the weighted average ticket price charged for covered ski tickets purchased or obtained by residents of the State of Maine.

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F. "Non-Resident Covered Ski Ticket Yield" shall mean the weighted average ticket price charged for covered ski tickets purchased or obtained by non-residents of the State of Maine.

G. "Deficiency" shall mean, for any Ski Season in which the Covered Ski Ticket Ratio exceeds the Base Covered Ski Ticket Ratio, the amount in dollars calculated by (a) multiplying the difference between the Covered Ski Ticket Ratio for that season and the Base Covered Ski Ticket Ratio by the Non-Resident Covered Ski Ticket Yield for that season and (b) multiplying the amount determined in (a) above by the number of Maine resident skiers with Covered Ski Tickets in that season.

H. "Skiing" shall mean downhill skiing and snowboarding.

I. "Ski Season" shall mean the period of time annually from fall to spring during which either Sunday River or Sugarloaf are open for skiing.

J. "Sunday River" shall mean the Sunday River ski area owned by Defendant American Skiing Company and located in Newry, Maine.

K. "Sugarloaf" shall mean the Sugarloaf ski area currently owned by S-K-I Limited and to be acquired by the American Skiing Company and located in Carrabasset Valley, Maine.

III. DETERMINATION AND APPLICATION OF COVERED SKI RATIO

A. Defendant shall determine the Base Covered Ski Ticket Ratio by October 15, 1996, pursuant to a methodology and procedure approved by the Department in its sole reasonable discretion.

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B. Defendant shall ensure for the 1996-97 Ski Season, and for each subsequent Ski Season, that the Covered Ski Ticket Ratio does not exceed the Base Covered Ski Ticket Ratio.

C. Defendant shall report to the Department its Resident Covered Ski Ticket Yield and its Non-Resident Covered Ski Ticket Yield within 30 days after the close of each Ski Season.

D. Defendant shall determine the Resident Covered Ski Ticket Yield and the Non-Resident Covered Ski Ticket Yield pursuant to a methodology and procedure approved by the Department in its sole reasonable discretion.

E. (1) If the Covered Ski Ticket Ratio for any Ski Season exceeds the Base Covered Ski Ticket Ratio the Defendant shall calculate the Deficiency, and shall ensure that the Resident Covered Ski Ticket Yield for the next Ski Season is sufficient to meet the Base Covered Ski Ticket Ratio and, additionally, recoup the Deficiency.

(2) If Defendant's Covered Ski Ticket Ratio for any Ski Season exceeds the Base Covered Ski Ticket Ratio the Defendant shall submit a report to the Department within 30 days after the close of that Ski Season attesting to its calculation of the amount of the Deficiency.

(3) If Defendant's Covered Ski Ticket Ratio for any Ski Season exceeds the Base Covered Ski Ticket Ratio the Defendant shall submit a report to the Department within 30 days after the close of the next

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following Ski Season attesting to its recoupment of, or efforts to recoup, the Deficiency from the prior year.

(4) Beginning with the 1997-98 Ski Season, if the Covered Ski Ticket Ratio exceeds the Base Covered Ski Ticket Ratio for any two consecutive years the Deficiency for the second year shall be doubled.

(5) If the Covered Ski Ticket Ratio exceeds the Base Covered Ski Ticket Ratio for three or more years in any five year period the Deficiency for the third, fourth and fifth years shall be doubled and, in addition, the Department may apply to this Court for such further orders to remedy and sanction Defendant's failure to meet the Covered Ski Ticket Ratio.

IV. YOUTH SEASON PASSES

Defendant shall provide discounts to Maine residents under age 18 purchasing season passes at Sunday River or Sugarloaf for the 1996-97, 1997-98 and 1998-99 Ski Seasons equal in total dollar amount to the total dollar amount of such discounts provided in the 1995-96 Ski Season.

V. SUCCESSORS

The provisions of Sections III and IV are binding upon American Skiing Company and upon any person subsequently acquiring or exercising ownership or control of both Sunday River and Sugarloaf.

VI. COSTS

A. Defendant shall reimburse the Department in an amount not to exceed \$7000 for the costs of consultants and incidental expenses incurred in reviewing this matter.

B. Defendant shall reimburse the Department for (1) its reasonable costs of monitoring Defendant's compliance with this Consent Order and (2) its reasonable costs and attorneys fees in securing Defendant's compliance with this Consent Order, for the triennial review described in Section VII and any proceeding under Section VIII.

VII. TRIENNIAL REVIEW

A. Defendant may request in writing that the Department re-examine any provision of this Order.

B. Upon receiving a request pursuant to paragraph A, the Department shall re-examine the provisions of the Consent Order noted in the Defendant's request and any other provisions selected by the Department and shall report to the Court as to the need to modify or amend any such provision. Notwithstanding the above, the Department shall not be required to re-examine the provisions of the Consent Order more frequently than once in every three years.

VIII. RETENTION OF JURISDICTION

Jurisdiction is retained by this Court for the purpose of enabling any of the parties to this Consent Order to apply to this Court at any time for such further

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directions as may be necessary or appropriate for the construction or carrying out of this Consent Order, for the modification of any of the provisions hereof, for the enforcement of compliance herewith and for the punishment of any violations hereof.

ANDREW KETTERER
Attorney General

STEPHEN L. WESSLER
Assistant Attorney General
Chief, Public Protection Division

Dated: *June 27, 1996*

Mary M. Sauer
By: MARY M. SAUER
Assistant Attorney General
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Augusta, Maine 04333
(207) 626-8800

REC'D & FILED
NANCY A. DESJARDIN

JUN 27 1996

CLERK OF COURTS
KENNEBEC COUNTY

AMERICAN SKIING COMPANY

Dated: *June 27, 1996*

Jeffrey M. White
By: JEFFREY M. WHITE, ESQ.
Pierce Atwood Scribner, Allen, Smith & Lancaster
1 Monument Square
Portland, Maine 04101-4033
(207) 773-6411

It is hereby Ordered and Decreed:

Dated: *June 27, 1996*

John Collier
Justice, Superior Court

A TRUE COPY

ATTEST:

Nancy A. Desjardin
Nancy A. Desjardin
Clerk of Courts