

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

05-21

CASE NO. _____

CIV-MORENO

TOPP, INC., a Florida corporation,

Plaintiff,

MAGISTRATE JUDGE
SIMONTON

vs.

UNIDEN AMERICA CORPORATION, a
Delaware corporation,

Defendant.

6/28/05
[Signature]

COMPLAINT

Topp, Inc. ("Topp"), through undersigned counsel, sues Uniden America Corporation ("Uniden America") and alleges as follows:

The Parties, Jurisdiction and Venue

1. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1332(a)(2) because the amount in controversy exceeds \$75,000, exclusive of interest and costs, and is between citizens of different states.

2. Topp is a Florida corporation with its principal place of business located in Miami, Florida.

3. Uniden America is a Delaware corporation with its principal place of business located in Fort Worth, Texas. Uniden America is authorized to conduct business in the State of Florida and regularly transacts business in the State of Florida.

1/10/05

4. Venue is proper in this district pursuant to 28 U.S.C. § 1391(a)(1) and (2).

5. Since its founding in 1988, Topp has been engaged in the business of distributing consumer electronics products in the United States, the Caribbean and Central and South America.

6. Uniden America is the North American subsidiary of Japan-based Uniden Corporation. Uniden America manufactures and markets a wide line of wireless consumer electronics including cordless telephones. Uniden America sells its products through dealers and distributors throughout North, Central and South America. In 2003, Uniden America's operations generated revenues of approximately \$538 million.

Count I - Breach of Exclusive Distribution Agreements

7. Topp repeats paragraphs 5 and 6 above.

8. Beginning in 1988, Topp continuously served as Uniden America's sole independent sales representative and, subsequently, its exclusive distributor for certain new products in Central America, Mexico, the Caribbean, Puerto Rico and South America (collectively, "Latin America").

9. In furtherance of its role as Uniden America's sole independent sales representative and later its exclusive distributor, Topp purchased millions of dollars in inventory and expended considerable effort and expense in marketing and promoting Uniden America's new products and developing customers in Latin America.

10. In addition, beginning in 1996, Topp purchased on an exclusive basis Uniden America's "as is" products returned from Uniden America's U.S. retail distribution, and

exclusively distributed the refurbished "as is" products to retailers in the United States, Canada and Latin America.

11. Topp relied upon its exclusive agreements with Uniden America, and upon Uniden America's assurances the agreements would continue, in purchasing millions of dollars worth of new and refurbished products and expending considerable effort and expense in marketing Uniden America's products.

12. In 2004, Topp secured orders to open up several new accounts in Mexico, including Costco, Sam's Club and Walmart, to begin selling new Uniden America phones at these companies' stores in Mexico. At Costco and Sam's Club, Topp created annual buying programs for certain Uniden America phone models, delivered product to these stores and incurred substantial promotional expenses promoting Uniden America's products. At Walmart, Topp was in the final stages of establishing a buying program for Uniden America phones.

13. In 2003 and 2004, Topp also requested that Uniden America assist Topp in certifying its phones for sale in Brazil because Topp had requests for large volumes of new phones. Uniden America agreed to accompany Topp to Brazil to assist with the Brazilian certification of Uniden America's cordless phones with the local phone company so Topp could begin distributing Uniden America cordless phones in Brazil.

14. In late 2004, Uniden America breached the parties' exclusive distribution agreement for new products by terminating it without advance notice. Thereafter, Uniden America began selling new products through third parties and directly to customers

originated by Topp during the existence of the exclusive distribution agreement, including Costco, Sam's Club and Walmart.

15. Following termination of the exclusive distribution agreement for new products, Uniden America began selling its new products directly to Topp's customers and to third parties at prices substantially lower prices, thereby substantially reducing the price differential between new and refurbished products.

16. Uniden America's termination of the exclusive distributorship agreement for new products and its direct distribution of new products to retailers and through third party distributors at substantially lower prices effectively destroyed Topp's ability to sell refurbished "as is" Uniden America products in Latin America.

17. Uniden America breached the parties exclusive distribution agreement for the sale of refurbished "as is" products by selling its new products at substantially lower prices which effectively eliminated the price differential between new and refurbished products.

18. Topp suffered substantial monetary damages in excess of \$75,000, exclusive of interest, attorneys' fees and costs, including lost sales and profits, as a result of Uniden America's breaches of the parties' exclusive distribution agreements.

19. All conditions precedent to the commencement of this suit have been performed, occurred or been waived.

WHEREFORE, Topp demands judgment in its favor and against Uniden America, awarding damages, prejudgment interest, costs and such other and further relief as this Court deems appropriate.

Count II - Tortious Interference

20. Topp realleges paragraphs 5, 6 and 10 above.

21. Topp had an advantageous business relationship with Lectron Radio Sales, Ltd. ("Lectron"). Beginning in 1998, Topp sold Uniden America refurbished phones to Lectron, a customer based in Canada. Over the years, Topp sold millions of dollars of Uniden America refurbished phones to Lectron.

22. In July 2004, Uniden America threatened Lectron that it would terminate direct sales of other Uniden America products to Lectron if it did not terminate its continuing purchases of Uniden America refurbished phones through Topp.

23. Lectron ceased purchasing refurbished Uniden America phones through Topp as a result of Uniden America's threat, resulting in Topp's loss of millions of dollars in annual sales.

24. Uniden America's threat to terminate Lectron's purchases of other Uniden America products unless Lectron ceased purchasing refurbished Uniden America phones from Topp constituted tortious interference with an advantageous business relationship.

25. Topp suffered substantial monetary damages in excess of \$75,000, exclusive of interest, attorneys' fees and costs, including lost sales and profits, as a direct result of Uniden America's tortious interference with Topp's advantageous business relationship.

WHEREFORE, Topp demands judgment in its favor and against Uniden America, awarding damages, together with prejudgment interest, costs and such other and further relief as this Court deems appropriate.

Demand for Jury Trial

Topp demands trial by jury as to all issues so triable as a matter of right.

Dated: June 24th, 2005.

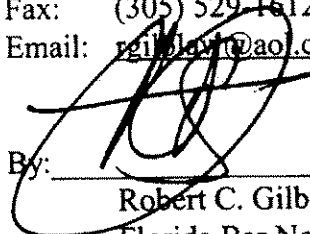
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Attorneys for Plaintiff

CIVIL COVER SHEET 05

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law; except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS
 TOPP, INC., a Florida corporation
Deed case 2/6/98/Morano/Simonton

(b) County of Residence of First Listed Plaintiff Miami-Dade
 (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)
 Hanzman & Criden, P.A. Robert C. Gilbert, P.A.
 220 Alhambra Circle, Suite 400 220 Alhambra Circle, Suite 400
 Coral Gables, FL 33134 Coral Gables, FL 33134
 (305) 357-9000 (305) 529-9100

DEFENDANTS
 UNIDEN AMERICA CORPORATION, a Delaware corporation,
 County of Residence of First Listed Defendant Broward
 (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.
MAGISTRATE

Attorneys (If Known) SIMONTON

CIV-MORENO

(d) Check County Where Action Arose: DADE MONROE BROWARD PALM BEACH MARTIN ST. LUCIE INDIAN RIVER OKEECHOBEE HIGHLANDS

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

1 U.S. Government Plaintiff 3 Federal Question (U.S. Government Not a Party)

2 U.S. Government Defendant 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

Citizen of This State	<input checked="" type="checkbox"/> PTF <input type="checkbox"/> DEF	<input type="checkbox"/> 1 <input type="checkbox"/> 1	Incorporated or Principal Place of Business in This State	<input checked="" type="checkbox"/> PTF <input type="checkbox"/> DEF	<input type="checkbox"/> 4 <input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2 <input checked="" type="checkbox"/> 2	<input type="checkbox"/> 2 <input checked="" type="checkbox"/> 2	Incorporated and Principal Place of Business in Another State	<input type="checkbox"/> 5 <input checked="" type="checkbox"/> 5	<input type="checkbox"/> 5 <input checked="" type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3 <input type="checkbox"/> 3	<input type="checkbox"/> 3 <input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6 <input type="checkbox"/> 6	<input type="checkbox"/> 6 <input type="checkbox"/> 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input checked="" type="checkbox"/> 160 Stockholders' Suits <input checked="" type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS - Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes

V. ORIGIN (Place an "X" in One Box Only)

1 Original Proceeding 2 Removed from State Court 3 Remanded from Appellate Court 4 Reinstated or Reopened 5 Transferred from another district (specify) 6 Multidistrict Litigation 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION
 (Cite the U.S. Civil Statute under which you are suing and Write a Brief Statement of Cause (Do not cite jurisdictional statute unless necessary))
28 U.S.C. § 1332 (2)(2) Breach of Exclusive Distribution Agreement and Tortious Interference

LENGTH OF TRIAL via 10 days estimated (for both sides to try entire case)

VII. REQUESTED IN COMPLAINT: CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 DEMAND \$ 75,000. CHECK YES only if demanded in complaint. JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY (See instructions): JUDGE _____ DOCKET NUMBER _____

DATE 6/24/05 SIGNATURE OF ATTORNEY OF RECORD [Signature]

FOR OFFICE USE ONLY
 RECEIPT # 923084 AMOUNT 250 APPLYING IFP _____