

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA

vs.

APPLETON PAPERS, INC.;
JUJO PAPER CO., LTD.;
NIPPON PAPER INDUSTRIES CO., LTD.;
HIRINORI ICHIDA; and
JERRY A. WALLACE,

Defendants.

Criminal No.: 95-10388 JLT

Violations:
15 U.S.C. § 1

Filed: [12/13/95]

Judge: Tauro

INDICTMENT

COUNT ONE - CONSPIRACY TO RESTRAIN TRADE
(15 U.S.C. § 1)

The Grand Jury charges:

1. JUJO PAPER CO., LTD., and NIPPON PAPER INDUSTRIES CO., LTD. are hereby indicted and made defendants on the charge stated below.

DESCRIPTION OF THE OFFENSE

2. Beginning at least as early as February 1990 and continuing at least until December 1990, the exact dates being unknown to the Grand Jury, the defendants and co-conspirators entered into and engaged in a combination and conspiracy to increase prices of jumbo roll thermal facsimile paper (hereinafter "fax paper") sold in the United States and Canada (hereinafter "North America"). The combination and conspiracy unreasonably restrained foreign and interstate trade and commerce in violation of Section One of the Sherman Act (15 U.S.C. § 1).

3. The charged combination and conspiracy consisted of a continuing agreement, understanding and concert of action among the defendants and co-conspirators, the substantial term of which was to increase prices of fax paper sold throughout North America.

DEFENDANTS AND CO-CONSPIRATORS

4. NIPPON PAPER INDUSTRIES, CO., LTD. ("NIPPON"), is a corporation organized and existing under the laws of Japan, and has its principal place of business in Tokyo, Japan. NIPPON has a satellite office located in Seattle, Washington. NIPPON was formed in 1993 when JUJO PAPER CO., LTD. ("JUJO") and Sanyo Kokusaku Co., Ltd., merged. During the period covered by this Count, JUJO manufactured fax paper and sold it for import into North America through trading houses in Japan and their United States subsidiaries. In 1990, JUJO sold approximately \$6.1 million dollars of fax paper for import into North America.

5. Various individuals and corporations, not made defendants in this Indictment, participated as co-conspirators in the offense charged and performed acts and made statements to further it.

6. Whenever this Indictment refers to any act, deed, or transaction of any corporation, it means that the corporation engaged in the act, deed or transaction by or through its officers, directors, employees, agents, or other representatives while they were actively engaged in the management, direction, control or transaction of its business or affairs.

MEANS AND METHODS OF THE CONSPIRACY

7. For the purpose of forming and carrying out the charged combination and conspiracy, the defendants and co-conspirators did the following things, among others:

(a) in February 1990, held meetings in Japan where they discussed increasing prices for fax paper to be sold in North America;

(b) in March 1990, held a meeting in Japan where they agreed to increase prices for fax paper to be sold in North America;

(c) raised their prices for fax paper to be imported into North America;

(d) directed their co-conspirator trading houses to implement price increases to fax paper customers in North America; and

(e) participated in telephone conversations and otherwise contacted each other to maintain continued adherence to their conspiratorial agreement.

TRADE AND COMMERCE

8. Fax paper is a type of specialty paper with a chemical coating that allows it to produce an image by a transfer of thermal energy from a print head. Fax paper manufacturers produce the paper in bulk rolls, which are commonly referred to as jumbo rolls. Jumbo rolls are approximately 40 to 50 inches in width and weigh up to 2,000 pounds. Converters, the primary customers of fax paper, buy fax paper and cut the jumbo rolls down into smaller finished rolls that are suitable for use in fax paper machines, certain medical printing equipment, and other uses. In 1990 and 1991, total sales of fax paper in North America were approximately \$100 million during each year.

9. During the period covered by this Count, to import their fax paper into North America, Japanese manufacturers typically sold their fax paper to unaffiliated trading houses in Japan. The Japanese manufacturers sold discrete quantities of fax paper to the trading houses in Japan, for specific customers in North America, on condition that such quantities be sold to the customers at specified prices. The Japanese manufacturers largely controlled the prices to be charged to specific North American customers, and monitored the trading houses' transactions with the North American customers to ensure that the agreed upon prices were charged. Once the Japanese trading houses purchased the fax paper, they then shipped it to the United States for sale to their wholly owned U.S. subsidiaries ("U.S. trading houses"). The U.S. trading houses then either sent the fax paper shipments directly to customers throughout North America or transported the shipments to warehouse facilities for a short period of storage before being transported to the customers. The imported fax paper continued to bear the Japanese manufacturers' names throughout this process.

10. During the period covered by this Count, price notices and invoices, shipment reports, and billing documents, all of which were essential to the import of fax paper from Japan into the United States were transmitted between Japan and the United States by co-conspirator trading houses in a continuous and uninterrupted flow of foreign and interstate commerce.

11. During the period covered by this Count, the defendants and co-conspirators shipped, or caused to be shipped, in a continuous and uninterrupted flow of foreign and interstate commerce, substantial quantities of fax paper manufactured in Japan into the United States for sale to customers.

12. The business activities of the defendants and co-conspirators that are the subject of this Count were within the flow of, and substantially affected, foreign and interstate commerce, and had a direct, substantial and reasonably foreseeable effect on import and domestic commerce.

JURISDICTION AND VENUE

13. The conspiracy charged in Count One of this Indictment was carried out, in part, within the District of Massachusetts and within the five years preceding the return of this Indictment.

ALL IN VIOLATION OF TITLE 15 U.S.C. SECTION 1.

COUNT TWO - CONSPIRACY TO RESTRAIN TRADE (15 U.S.C. § 1)

The Grand Jury further charges:

14. APPLETON PAPERS, INC., HIRINORI ICHIDA and JERRY A. WALLACE are hereby indicted and made defendants on the charge stated below.

15. Each and every allegation contained in paragraphs 5, 6 and 8 are here realleged with the same full force and effect as though said paragraphs were set forth in full detail.

DESCRIPTION OF THE OFFENSE

16. Beginning at least as early as July 1991 and continuing at least until February 1992, the exact dates being unknown to the Grand Jury, the defendants and co-conspirators entered into and engaged in a combination and conspiracy to increase prices of jumbo roll thermal facsimile paper (hereinafter "fax paper") sold in the United States and Canada (hereinafter "North America"). The combination and conspiracy unreasonably restrained foreign

and interstate trade and commerce in violation of Section One of the Sherman Act (15 U.S.C. § 1).

17. The charged combination and conspiracy consisted of a continuing agreement, understanding and concert of action among the defendants and co-conspirators, the substantial term of which was to increase prices of fax paper sold in North America.

DEFENDANTS AND CO-CONSPIRATORS

18. APPLETON PAPERS, INC. ("APPLETON"), is a corporation organized and existing under the laws of the State of Wisconsin, with its principal place of business in Appleton, Wisconsin. APPLETON is a wholly owned subsidiary of Arjo Wiggins Appleton, PLC of London, England. During the period covered by this Count, APPLETON was a U.S. manufacturer engaged in the business of selling fax paper. In 1991, APPLETON sold approximately \$45 million dollars of fax paper to customers in North America.

19. HIRINORI ICHIDA is a citizen and resident of Japan. During the period covered by this Count, he managed the Mitsubishi Paper Mills, Ltd. ("MPM") division responsible for imports of fax paper to North America. MPM is a corporation organized and existing under the laws of Japan, and has its principal place of business in Tokyo, Japan. During the period covered by this Count, MPM manufactured fax paper in Japan and sold it for import into North America through a trading house, Mitsubishi Corporation ("MC") (a Japanese corporation located in Tokyo, Japan) and its subsidiary, Mitsubishi International Corporation ("MIC") (a U.S. corporation with its principal place of business located in New York, New York).

20. JERRY A. WALLACE ("WALLACE") is a United States citizen, residing in Appleton, Wisconsin. Prior to January 1991, WALLACE was the Director of APPLETON'S Thermal Business Unit which, among other things, was responsible for making pricing decisions for fax paper. In January 1991, he became APPLETON'S Vice President of Research & Development. In that position, he remained involved in pricing decisions for fax paper during the period covered by this Count.

MEANS AND METHODS OF THE CONSPIRACY

21. For the purpose of forming and carrying out the charged combination and conspiracy, the defendants and co-conspirators did the following things, among others:

(a) on July 10, 1991, WALLACE flew to Springfield, Massachusetts, to meet with Kazuhiko Watanabe ("Watanabe"), president of Kanzaki Specialty Papers ("KSP"), a U.S. manufacturer of fax paper, with its principal place of business located in Ware, Massachusetts. At the meeting, Watanabe proposed a price increase for fax paper sold in North America with KSP leading the increase. WALLACE agreed to support the increase and to inform others at APPLETON about their discussion;

(b) on July 29, 1991, Watanabe, ICHIDA and certain other co-conspirators from MPM, MIC and New Oji Paper Co., Ltd., the parent company of KSP, met in KSP's offices in Tarrytown, New York and agreed to increase fax paper prices in North America;

(c) in July and August 1991, telephone calls were placed among the defendants and co-conspirators to confirm each firm's intentions to participate in the conspiracy and to confirm that the price increases would be implemented;

(d) in or about August 1991, announced price increases to fax paper customers in North America; and

(e) charged higher prices to fax paper customers in North America.

TRADE AND COMMERCE

22. During the period covered by this Count, the defendants and co-conspirators manufactured and/or sold fax paper throughout North America. The defendants and co-conspirators who manufactured fax paper did so in the United States or Japan. Fax paper manufactured in the United States was sold directly to customers in the U.S. Fax paper manufactured in Japan was imported through unaffiliated, co-conspirator Japanese trading houses and their U.S. subsidiaries. The trading houses buy, import and sell the fax paper to customers throughout North America.

23. During the period covered by this Count, the defendants and co-conspirators shipped, or caused to be shipped, in a continuous and uninterrupted flow of foreign and interstate commerce, substantial quantities of fax paper manufactured in Japan into the United States for sale to customers, and substantial quantities of fax paper manufactured in Massachusetts and Wisconsin into other states for sale to customers.

24. The business activities of the defendants and co-conspirators that are the subject of this Count were within the flow of, and substantially affected, foreign and interstate commerce.

JURISDICTION AND VENUE

25. The conspiracy charged in Count Two of this Indictment was carried out, in part, within the District of Massachusetts and within the five years preceding the return of this Indictment.

ALL IN VIOLATION OF TITLE 15 U.S.C. SECTION 1.

A TRUE BILL

Dated:

FOREPERSON

_____/s/"_____
Anne K. Bingaman
Assistant Attorney General

_____/s/"_____
Lisa M. Phelan

_____/s/"_____
Gary R. Spratling

_____/s/"_____
Sheryl L. Robinson

_____/s/"_____
J. Robert Kramer II

_____/s/"_____
Reginald K. Tom

_____/s/"_____
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_____/s/"_____
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