

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS

UNITED STATES OF AMERICA)	
)	Criminal No. 3:99-CR-201-R
v.)	
)	Filed: May 20, 1999
DR. KUNO SOMMER)	
)	Violations: 15 U.S.C. § 1
Defendant.)	18 U.S.C. § 1001
)	

INFORMATION

COUNT ONE
15 U.S.C. § 1

The United States of America, acting through its attorneys, charges:

I

DESCRIPTION OF THE OFFENSE

1. Dr. Kuno Sommer is made a defendant on the charge stated below.
2. Beginning in part at least as early as January 1990 and continuing in part until at least February 1999, the exact dates being unknown to the United States, the defendant's corporate employer, F. Hoffmann-La Roche Ltd ("Roche"), and co-conspirators entered into and participated in a combination and conspiracy to suppress and eliminate competition by fixing the price and allocating the volume of certain vitamins manufactured by the corporate co-conspirators and sold by them in the United States and elsewhere, and to allocate customers for vitamin premixes sold in the United States. The defendant joined and participated in the charged conspiracy from at least as early as January 1991 until at least December 1997. The combination and conspiracy engaged in by the defendant and co-conspirators was in unreasonable restraint of

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

3. The charged combination and conspiracy:
 - (a) consisted of a continuing agreement, understanding, and concert of action among the defendant and co-conspirators regarding certain vitamins manufactured by the corporate conspirators and sold by them in the United States and elsewhere, the substantial terms of which were to:
 - (i) fix, increase, and maintain prices and to coordinate price increases for the sale of such vitamins in the United States and elsewhere;
 - (ii) allocate among the corporate conspirators the volume of sales and market shares of such vitamins in the United States and elsewhere; and,
 - (iii) allocate among corporate conspirators all or part of certain contracts to supply vitamin premixes to various customers located throughout the United States and to refrain from submitting bids, or to submit collusive, non-competitive and rigged bids, therefor;
 - (b) involved a changing group of conspirators and affected, as set forth below, a changing group of vitamins at various points in time during the period covered by this Information, its scope adjusting over time to the manufacturers producing certain vitamins and participating in the combination and conspiracy; and,

- (c) affected at least the following vitamins for the indicated time periods during the combination and conspiracy charged in this Information:
- (i) vitamins A and E sold in the United States and elsewhere, from January 1990 into February 1999;
 - (ii) vitamin B2 (Riboflavin) sold in the United States and elsewhere, from January 1991 into at least Fall 1995;
 - (iii) vitamin B5 (CalPan) sold in the United States and elsewhere, from January 1991 into at least December 1998;
 - (iv) vitamin C sold in the United States and elsewhere, from January 1991 into at least the late Fall 1995;
 - (v) beta carotene sold in the United States and elsewhere, from January 1991 into at least December 1998; and,
 - (vi) vitamin premixes sold to customers located throughout the United States, from January 1991 into at least December 1997.

4. For the purpose of forming and carrying out the charged combination and conspiracy, the defendant and co-conspirators did those things that they combined and conspired to do including, among other things:

Vitamins

- (a) participating in meetings and conversations in the United States and elsewhere to discuss the prices and volumes of vitamins A and E, vitamin B2, vitamin B5, vitamin C, and beta carotene sold in the United States and elsewhere;

- (b) agreeing, during such meetings and conversations regarding such vitamins, to fix, increase, and maintain prices at certain levels in the United States and elsewhere;
- (c) agreeing, during such meetings and conversations regarding such vitamins, to allocate among the corporate conspirators the approximate volume of such vitamins to be sold by them in the United States and elsewhere;
- (d) exchanging sales and customer information for the purpose of monitoring and enforcing adherence to the above-described agreements;
- (e) issuing price announcements and price quotations in accordance with the above-described agreements;
- (f) selling such vitamins at the agreed-upon prices and in accordance with the agreed-upon sales volume allocations in the United States and elsewhere;

Vitamin Premixes

- (g) participating in meetings and conversations in the United States and elsewhere to discuss the submission of prospective bids for contracts to supply vitamin premixes to various customers located throughout the United States;
- (h) agreeing, during such meetings and conversations, which corporate conspirator would be designated the low bidder for particular contracts to supply vitamin premixes to various customers located throughout the United States;

- (i) agreeing, during such meetings and conversations, on the prices to be submitted by the designated low bidders for particular contracts to supply vitamin premixes to various customers throughout the United States;
- (j) refraining from bidding, or submitting intentionally high, complementary and non-competitive bids, for particular contracts to supply vitamin premixes to various customers throughout the United States; and
- (k) selling vitamin premixes to various customers throughout the United States at rigged and non-competitive prices.

II

BACKGROUND

5. Vitamins are organic compounds required in the diet of humans and animals for normal growth and maintenance of life. Vitamins are essential sources of certain coenzymes necessary for metabolism, the biochemical processes that support life. All known vitamins have been synthesized chemically, and various such synthesized vitamins are manufactured and sold by the defendant and its corporate co-conspirators.

6. Vitamins are necessary for the normal and healthy growth and development of both humans and animals. Large quantities of vitamins A and E, vitamin B2, vitamin B5, vitamin C, and beta carotene are sold to customers in the human food, pharmaceutical and animal feed industries. Vitamin premixes are a blend of several vitamins and other products in either dry or spray-on applications. Formulated and sold as additives, these vitamin premix applications are used to enrich human food and animal feed products.

III

DEFENDANT AND CO-CONSPIRATORS

7. During the period covered by this Information, Dr. Kuno Sommer was first the North American Regional Manager for vitamins and subsequently, the Director of Worldwide Marketing of Roche, a corporation organized and existing under the laws of Switzerland, with its principal place of business in Basel, Switzerland. Roche is engaged in the manufacture and sale of vitamins and vitamin premixes to the United States and elsewhere.

8. Various corporations and individuals not made defendants herein participated as co-conspirators in the offenses charged herein and performed acts and made statements in furtherance thereof.

9. Wherever in this Information reference is made to any act, deed, or transaction of a corporation, the allegation means that the corporation engaged in the act, deed, or transaction by or through its officers, directors, agents, employees, or representatives while they were actively engaged in the management, direction, control, or transaction of its business or affairs.

IV

TRADE AND COMMERCE

10. During the period covered by this Information, the defendant and co-conspirators sold and distributed a substantial quantity of vitamins and vitamin premixes subject to the charged conspiracy in a continuous and uninterrupted flow of interstate and foreign trade and commerce to customers located in states or countries other than the states or countries in which the vitamins and vitamin premixes were produced.

11. During the period covered by this Information, the activities of the defendant and co-conspirators that are the subject of this Information were within the flow of, and substantially affected, interstate and foreign trade and commerce.

V

JURISDICTION AND VENUE

12. The combination and conspiracy charged in this Information was carried out, in part, within the Northern District of Texas within the five years preceding the filing of this Information.

ALL IN VIOLATION OF TITLE 15, UNITED STATES CODE, SECTION 1.

COUNT TWO
18 U.S.C. § 1001

The United States of America, acting through its attorneys, charges:

VI

DESCRIPTION OF THE OFFENSE

13. Dr. Kuno Sommer is hereby made a defendant on the charge stated below.

14. On or about March 12, 1997, the defendant appeared for an interview by law enforcement officials of the United States Department of Justice, Antitrust Division, who were investigating a matter within the jurisdiction of the United States Department of Justice, a department of the United States;

15. On or about March 12, 1997, the defendant did knowingly and willfully make and cause to be made false, fictitious and fraudulent statements and representations as to material

facts to law enforcement officials in a matter within the jurisdiction of the United States Department of Justice, a department of the United States;

16. On or about March 12, 1997, the defendant stated and represented to law enforcement officials of the United States Department of Justice, Antitrust Division, that: there was no conspiracy among the world's leading vitamins manufacturers, including his own corporate employer, Roche; that the defendant had never participated in meetings, conversations, or agreements to fix, increase, and maintain prices, or allocate sales volumes of, or customers for, certain vitamins with any representatives of any other manufacturer of vitamins. The defendant stated and represented that he was not aware of any meetings or conversations among other representatives of Roche or any other vitamin manufacturer relating to any agreements or conspiracy to fix, increase or maintain prices, or allocate sales volumes and customers in the vitamin industry.

17. In truth and in fact, the defendant then and there knew that he and other employees of Roche had regularly communicated and met on at least a quarterly basis with competitors, and discussed and agreed to fix, increase and maintain prices, allocate volumes of, and customers for, certain vitamins manufactured by the defendant's employer, Roche, and its corporate coconspirators, which products were sold in the United States and elsewhere.

ALL IN VIOLATION OF TITLE 18 UNITED STATES CODE, SECTION 1001.

Dated:

“/s/”
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“/s/”
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“/s/”

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