

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,

Plaintiff,

v.

KEWANEE OIL COMPANY,

Defendant.
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Civil Action No. 72 CIV 369

Filed: January 26, 1972

COMPLAINT

The United States of America, plaintiff, by its attorneys, acting under the direction of the Attorney General of the United States, brings this action to obtain equitable relief against the above-named defendant, and complains and alleges as follows:

I

JURISDICTION AND VENUE

1. This complaint is filed and this action is instituted under Section 4 of the Act of Congress of July 2, 1890, as amended (15 U.S.C. § 4), commonly known as the Sherman Act, and under Section 15 of the Act of Congress of October 15, 1914, as amended (15 U.S.C. § 25), commonly known as the Clayton Act, in order to prevent and restrain continuing violations by the defendant as hereinafter alleged of Section 1 of the Sherman Act (15 U.S.C. § 1) and Section 3 of the Clayton Act (15 U.S.C. § 14).

2. Defendant Kewanee Oil Company maintains offices, transacts business and is found within the Southern District of New York.

II

DEFINITION OF TERMS

3. As used herein:

(a) the term "customers" shall mean nickel electroplaters;

(b) the term "electroplating materials" includes brighteners, alkaline cleaners, boric acid and other acids, salts, tanks and other equipment used in the electroplating process; and

(c) the term "nickel" shall mean electrolytic nickel, S.D. nickel, anode bars, electrolytic slugs and chips and S.D. chips.

III

THE DEFENDANT

4. Kewanee Oil Company (hereinafter referred to as "Kewanee") is hereby made the defendant herein. Kewanee is a corporation organized and existing under the laws of the State of Delaware with its principal place of business in Bryn Mawr, Pennsylvania.

IV

TRADE AND COMMERCE

5. Nickel is a hard, malleable metallic element, nearly silver-white, and capable of high polish. Its strength and resistance to heat and corrosion give it wide usefulness as an alloy for both industrial and military application. One of the significant uses for

nickel is the coating of metal objects by the electroplating process. In this process the object to be coated is immersed in a solution containing a salt of the metal to be plated onto such object. Nickel in various forms is also placed in the solution and a high amperage current is passed through the solution which removes metal ions from the nickel and carries them to the object to be plated and deposits them in the form of a coating. By the addition of the so-called "brighteners" to the solution, the coated object is given a high polish without the necessity of buffing.

6. There is no practical substitute for nickel in the electroplating process. Nickel must be applied to a surface to be plated in order for the plating metal to adhere to the surface. Nickel used in the electroplating process was estimated to be valued in excess of \$50,000,000 in 1970.

7. During the period 1960 to date, the United States imported in excess of 90 percent of its total requirements of nickel. The International Nickel Co. of Canada, Ltd. and its wholly owned subsidiary, The International Nickel Co. Inc., a Delaware corporation, distribute and sell through the defendant Kewanee and their other distributors approximately 85 percent of all nickel used in the electroplating process in the United States.

8. As a result of periodic strikes at the mines owned by International Nickel Co. of Canada, Ltd., there have been occasional severe shortages of nickel for use in the electroplating process in the United States.

During such shortages, nickel for electroplating purposes has been allocated among customers by Kewanee and other nickel distributors on the basis of historical purchases. Customers of Kewanee and other nickel distributors have therefore needed to establish a continuing customer-supplier relationship with a particular nickel distributor in order to assure that nickel would be available for their electroplating needs during periods of short supply.

9. Defendant Kewanee sells to its customers approximately \$12,000,000 worth of nickel and \$6,000,000 worth of electroplating materials, exclusive of tanks and other equipment, annually. Defendant Kewanee is one of the largest distributors in the United States of electroplating materials used by the electroplating industry.

10. During the period of time covered by this complaint, Kewanee sold and shipped substantial quantities of nickel and electroplating material used in the electroplating process in interstate commerce to customers located in states other than the states from which said products were shipped.

V

VIOLATIONS ALLEGED

11. Beginning at least as early as 1966, the exact date being to the plaintiff unknown, and continuing thereafter to the date of filing this complaint, the defendant has entered into contracts for sale with and sales to its customers which have been

and are in unreasonable restraint of, and which may substantially lessen competition in, the above-described interstate trade and commerce in violation of Section 1 of the Sherman Act (15 U.S.C. § 1) and Section 3 of the Clayton Act (15 U.S.C. § 14). Said violations are continuing and will continue unless the relief hereinafter prayed for is granted.

12. The aforesaid contracts for sale and sales consist of contracts for sale and sales of nickel to defendant's customers for use, consumption or resale within the United States on the condition, agreement or understanding that such customers also purchase electroplating materials from the defendant.

VI

EFFECTS

13. The aforesaid violations have had, among others, the following effects:

(a) customers purchasing nickel from defendant have been restrained from purchasing electroplating materials from sources other than defendant;

(b) competitors of defendant in the sale of electroplating materials to defendant's nickel customers have been restrained from selling such materials to said customers; and

(c) competition between defendant and other suppliers of electroplating materials to defendant's nickel customers has been lessened and restrained.

VII

PRAYER

WHEREFORE, plaintiff prays:

1. That the Court adjudge and decree that defendant Kewanee has made sales and contracts for sale in interstate trade and commerce, as hereinabove alleged, in violation of Section 1 of the Sherman Act and of Section 3 of the Clayton Act.

2. That defendant, its officers, directors, agents and employees, and all other persons acting or claiming to act on its behalf, be enjoined and restrained from, in any manner, directly or indirectly, continuing, maintaining or renewing the aforesaid violations and from engaging in any other contracts, agreements, understandings or practices having a similar purpose or effect.

3. That defendant, its officers, directors, agents and employees, and all other persons acting or claiming to act on its behalf, be perpetually enjoined from:

(a) selling, or entering into or adhering to any contract, agreement or understanding to sell products, goods or services to any actual or potential customer on the condition or understanding that such customer will purchase any other products, goods or services from defendant;

(b) refusing to sell or discriminating in the prices, terms, amount or condition of sale of any products, goods or services based in whole or in part on the fact that a customer


has not bought, is not buying or will not agree to buy any other products, goods or services from defendant; and

(c) allocating any products, goods or services to customers on the condition or understanding that such customers will buy any other products, goods or services from defendant.

4. That the plaintiff have such other and further relief as the nature of the case may require and the Court may deem just and proper.

5. That the plaintiff recover the costs of this action.


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