

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,

Plaintiff,

v.

M. LOWENSTEIN & SONS, INC.,

Defendant.

Civil No. 70-2830

Filed: June 30, 1970

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COMPLAINT

The United States of America, plaintiff, by its attorneys, acting under the direction of the Attorney General of the United States, brings this civil 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 against the above-named defendant 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, in order to prevent and restrain the continuing violation by defendant, as hereinafter alleged, of Section 1 of the Sherman Act.

2. The defendant named herein maintains offices, ... within the Southern District of New York.

II

THE DEFENDANT

3. M. Lowenstein & Sons, Inc., hereinafter referred to as Lowenstein, is hereby made the defendant herein. Lowenstein is a corporation existing under the laws of New York and has its principal place of business in New York, New York. It is engaged in the manufacture of textiles, including sheets and pillowcases, hereinafter referred to collectively as sheets. Lowenstein distributes its sheets for sale throughout the United States.

III

CO-CONSPIRATORS

4. Various corporations and individuals not made defendants in this complaint, including department stores that resell Lowenstein's "Wamsutta" line of sheets, participated as co-conspirators in the offense alleged herein and performed acts and made statements in furtherance thereof.

IV

NATURE OF TRADE AND COMMERCE INVOLVED

5. Sheets are made in a variety of sizes from various textile fibers, but most sheets are made of cotton or of a blend of cotton and synthetic fiber. In general, the lower the thread count (the number of threads per square inch), the lower the quality and texture. Sheets are made in muslins and percales, the latter of which may be carded or combed. A combed percale is finer in texture than a carded percale.

6. The sheets of each manufacturer bearing the same count and composition are identical in manufacture

but are commonly packaged differently. One type of package, which usually bears the manufacturer's name and which is widely recognized and promoted, has a trademark or trade name identifying the sheets therein as prime line sheets of the manufacturer. Other types of packages, containing the same sheets, bear either a private label belonging to a large scale retailer or a secondary trademark or trade name. For the most part, such packages do not show the manufacturer's name or their source.

7. For the most part, sheet manufacturers distribute sheets either directly to retailers or through wholesalers for resale to retailers. In each major population center the sheet manufacturer's largest volume retailer customers are the department stores, upon which the manufacturer relies for promotion and advertising of his prime line sheets. Such retailers customarily offer sheets at specially reduced prices, referred to as "white sales", only at certain seasonal periods.

8. In 1966, domestic manufacturers of sheets sold approximately 14.9 million dozen sheets and 13.4 million dozen pillowcases for approximately \$421 million. With sales of more than \$39 million annually, Lowenstein accounts for approximately 10 percent of industry sales. Annual sales of its prime line sheets, which are sold under the "Wamsutta" trade name, have been about \$10 million in each of the past three years.

9. Lowenstein has mills located in South Carolina and warehouses in California, Ohio and Texas. It regularly ships sheets from such mills and warehouses in interstate commerce to customers located throughout the United States.

V

OFFENSE

10. Beginning at least as early as 1961, and continuing to the date of the filing of this complaint, the defendant and co-conspirators have engaged in a combination and conspiracy in unreasonable restraint of the aforesaid interstate trade and commerce in Wamsutta sheets, in violation of Section 1 of the Act of Congress of July 2, 1890, as amended (15 U.S.C. § 1), commonly known as the Sherman Act. This combination and conspiracy will continue unless the relief hereinafter prayed for is granted.

11. The aforesaid combination and conspiracy has consisted of a continuing understanding and concert of action among the defendant and co-conspirators to stabilize retail prices for Wamsutta sheets.

12. For the purpose of formulating and effectuating the aforesaid combination and conspiracy, the defendant and co-conspirators did the following things, among others:

(a) Lowenstein consulted with its department store retailers concerning suggested retail prices on Wamsutta sheets to be issued by Lowenstein for use during regular and white sale periods;

(b) Lowenstein prepared and distributed price lists for such sheets during regular and white sale periods;

- (c)⁵ the aforesaid department store retailers resold Wamsutta sheets at or above the aforesaid suggested retail prices;
- (d) certain department stores reported to the defendant instances of other retailers selling Wamsutta sheets below the suggested price; and
- (e) Lowenstein refrained from selling Wamsutta sheets to cut-price retailers.

VI

EFFECTS

13. The aforesaid combination and conspiracy has had the following effects, among others:

- (a) Competition in the sale and distribution of Wamsutta sheets was restrained.
- (b) Retail prices for Wamsutta sheets were stabilized at artificial levels.
- (c) Consumers purchasing Wamsutta sheets were deprived of the benefits of price competition.

PRAYER

WHEREFORE, plaintiff prays:

1. That the Court adjudge and decree that the defendant has engaged in a combination and conspiracy in unreasonable restraint of the aforesaid interstate trade and commerce in Wamsutta sheets, as hereinabove alleged, in violation of

Section 1 of the Sherman Act.

2. That the defendant, its successors, assignees, and transferees, and each of its officers, directors, agents, employees and representatives, and all persons acting

or claiming to act on its behalf, be perpetually enjoined and restrained from, in any manner, directly or indirectly, continuing, maintaining, or renewing the aforesaid combination and conspiracy to restrain interstate trade and commerce as hereinbefore alleged, or from engaging in any other combination or conspiracy having a similar purpose or effect, or from adopting or following any practice, plan, program or device having the purpose or effect of continuing, maintaining or renewing the aforesaid violation.

3. That the defendant be perpetually enjoined and restrained from entering into any agreements, arrangements or understandings to fix, maintain, or stabilize the retail prices for sheets.

4. That the defendant be enjoined and restrained for a period of years from publishing, distributing or communicating proposed, suggested or recommended retail prices for Lowenstein sheets.

5. That the defendant be enjoined for a period of years from applying or seeking to apply any state fair trade law against any person buying or selling Lowenstein sheets.

6. That the plaintiff have such other, further and different relief as the Court may deem just and proper.

7. That the plaintiff recover the costs of
this suit.

Dated: New York, New York

1970



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