

1 Lawrence W. Somerville  
2 Richard E. Neuman  
3 Department of Justice  
4 Antitrust Division  
5 1444 United States Court House  
6 312 North Spring Street  
7 Los Angeles, California 90012  
8 Telephone: (213) 688-2507

9 Attorneys for the Plaintiff

10 UNITED STATES DISTRICT COURT  
11 DISTRICT OF NEW MEXICO

12 UNITED STATES OF AMERICA,  
13 Plaintiff,  
14 v.

15 WOHL SHOE COMPANY;  
16 NORDSTROM'S ALBUQUERQUE,  
17 INC.;  
18 PARIS SHOE STORES; and  
19 PENOBSCOT SHOE COMPANY,  
20 Defendants.

21 Civil Action No. 9186

22 Filed: October 19, 1971

23 (Title 15 U.S.C. § 1; Conspiracy  
24 in Restraint of Interstate  
25 Trade and Commerce)

26 COMPLAINT

27 The United States of America, plaintiff, by its attor-  
28 neys, acting under the direction of the Attorney General of  
29 the United States, brings this action against the defendants  
30 named herein and complains and alleges as follows:

31 I

32 JURISDICTION AND VENUE

1. This complaint is filed and these proceedings are  
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, in order to prevent and restrain the continuing  
violation by the defendants, as hereinafter alleged, of  
Section 1 of said Act (15 U.S.C. § 1).

2. Each of the defendants transacts business and is  
found within the District of New Mexico.

II

THE DEFENDANTS

3. Wohl Shoe Company (hereinafter referred to as "Wohl") is hereby made a defendant herein. Wohl is a corporation organized and existing under the laws of the State of Missouri with its principal office in St. Louis, Missouri. Wohl is a wholly-owned subsidiary of Brown Shoe Company, Inc., a manufacturer of men's, women's and children's shoes. During the period of time covered by this complaint, Wohl has engaged in the business of selling shoes at retail through over one thousand retail shoe stores and leased shoe departments operated by it at various locations throughout the United States, including four retail shoe outlets in Albuquerque, New Mexico. In 1970 Wohl's sales of shoes throughout the United States had a retail value of at least \$250 million, and its sales of shoes in Albuquerque had a retail value of at least \$600,000.

4. Nordstrom's Albuquerque, Inc. (hereinafter referred to as "Nordstrom") is hereby made a defendant herein. Nordstrom is a corporation organized and existing under the laws of the State of Washington with its principal office in Albuquerque, New Mexico. Nordstrom is a wholly-owned subsidiary of Nordstrom Best, Inc., which directly and through its subsidiaries operates retail shoe stores and leased shoe departments in various states on the Pacific Coast and in Arizona, New Mexico and Texas. During the period of time covered by this complaint, Nordstrom has engaged in the business of selling shoes at retail in Albuquerque, New Mexico through a leased shoe department in Rhodes Department Store. In 1970 Nordstrom's sale of shoes in Albuquerque had a retail value of at least \$600,000.

5. Paris Shoe Stores (hereinafter referred to as "Paris") is hereby made a defendant herein. Paris is a partnership organized and existing under the laws of the State of New Mexico with its principal office in Albuquerque, New Mexico. During the period of time covered by this complaint, Paris has engaged in the business of selling shoes at retail in Albuquerque, New Mexico through three retail shoe stores. In 1970 Paris' sales of shoes in Albuquerque had a retail value of at least \$2.2 million.

6. Penobscot Shoe Company (hereinafter referred to as "Penobscot") is hereby made a defendant herein. Penobscot is a corporation organized and existing under the laws of the State of Maine with its principal office in Boston, Massachusetts. During the period of time covered by this complaint, Penobscot, directly and through its wholly-owned subsidiaries Old Town Shoe Company and Northeast Shoe Company, has engaged in the business of manufacturing and selling women's shoes to retailers throughout the United States. In 1970 Penobscot's sales of branded shoes in the United States had a retail value of approximately \$20 million and its sales of branded shoes in the Albuquerque, New Mexico market had a retail value of approximately \$40,000.

## III

## CO-CONSPIRATORS

7. Wolverine World Wide, Inc., a corporation organized under the laws of the State of Delaware, various retailers of shoes in the Albuquerque, New Mexico area, and other corporations, companies and individuals not made defendants in this complaint participated as co-conspirators with the defendants in the offense alleged herein and performed acts and made statements in furtherance thereof.

IV

TRADE AND COMMERCE

8. With the exception of Indian moccasins, virtually all men's, women's and children's shoes sold at retail in the Albuquerque, New Mexico area are manufactured in factories, including those of Penobscot, located in various states other than the State of New Mexico and, in response to orders placed by the defendant retailers and other retailers of shoes, are transported in interstate commerce direct from such factories to the retail shoe stores or shoe departments of retailers in the Albuquerque area.

9. During the period of time covered by this complaint, defendant retailers were the largest retailers of manufacturers' brand name shoes in the medium to high price range in the Albuquerque area. They accounted for sales of shoes in the Albuquerque area in 1970 having a retail value of at least \$3.4 million.

10. The defendant retailers sell multiple lines of shoes manufactured by several manufacturing companies, including shoes manufactured by Penobscot, Wolverine World Wide, Inc. and Wohl's parent corporation, Brown Shoe Company, Inc.

11. The buying habits of the consuming public are very sensitive to changes in styles as well as to changes adapted to seasonable demands. Manufacturers respond with two main offerings of shoes during each year in which new styles and fashions in shoes are introduced to retailers at shoe shows. When the shoe retailers order these styles of shoes, the shoes are manufactured in response to orders and the public acceptance of each new style. Shoes are produced in response to anticipated demand for the season on popular styles or on basic patterns that carry over from year to year.

V

OFFENSE ALLEGED

12. Beginning at least as early as 1969, the exact date being unknown to the plaintiff, and continuing to the date of the filing of this complaint, the defendants and co-conspirators have engaged in a combination and conspiracy in unreasonable restraint of the aforesaid interstate trade and commerce in shoes, 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. Said offense is continuing and will continue unless the relief hereinafter prayed for in this complaint is granted.

13. The aforesaid combination and conspiracy has consisted of a continuing agreement, understanding and concert of action among the defendants and co-conspirators, the substantial terms of which have been:

(a) to raise, fix and stabilize the retail prices of shoes in the Albuquerque, New Mexico area;

(b) to induce and persuade retailers of shoes in the Albuquerque, New Mexico area to adopt and adhere to uniform and non-competitive prices;

(c) to seek the assistance of manufacturers of shoes in maintaining the aforesaid uniform and non-competitive retail prices for shoes;

(d) to induce and persuade manufacturers of shoes to refuse to sell to retailers of shoes that do not adopt the aforesaid uniform and non-competitive prices; and

1 (e) to refuse to sell to retailers of shoes  
2 that do not adopt the aforesaid uniform and non-  
3 competitive prices.

4 14. For the purpose of forming and effectuating the  
5 aforesaid combination and conspiracy, the defendants and  
6 co-conspirators did those things which they combined and  
7 conspired to do.

8 VI

9 EFFECTS OF THE COMBINATION AND CONSPIRACY

10 15. The aforesaid combination and conspiracy has had,  
11 among others, the following effects:

12 (a) price competition among the defendant and  
13 co-conspirator retailers of shoes has been restricted  
14 and suppressed;

15 (b) prices of shoes sold in the Albuquerque,  
16 New Mexico area by defendant and co-conspirator  
17 retailers have been raised, fixed and stabilized;

18 (c) retailers of shoes in the Albuquerque,  
19 New Mexico area have been deprived of the oppor-  
20 tunity to purchase shoes from certain manufacturers,  
21 including defendant Penobscot; and

22 (d) customers of the defendant and co-  
23 conspirator retailers have been deprived of the  
24 opportunity to purchase shoes at competitive prices  
25 and from retailers other than the defendant and co-  
26 conspirator retailers.

27 VII.

28 PRAYER

29 WHEREFORE, the plaintiff prays:  
30  
31  
32

1        1. That the aforesaid combination and conspiracy be  
2 adjudged and decreed to be unlawful and in violation of  
3 Section 1 of the Sherman Act.

4        2. That each of the defendants, its successors, assignees  
5 and transferees, and the respective officers, directors, agents  
6 and employees thereof, and all persons acting or claiming to  
7 act on behalf thereof, be perpetually enjoined and restrained  
8 from continuing to carry out, directly or indirectly, the com-  
9 bination and conspiracy hereinbefore alleged, or from engaging  
10 in any other combination or conspiracy having a similar purpose  
11 or effect, or from adopting or following any practice, plan,  
12 program or device having a similar purpose or effect.

13        3. That each of the retailer defendants, its successors,  
14 assignees and transferees, and its officers, directors, agents  
15 and employees, and all persons acting or claiming to act on  
16 behalf thereof, be perpetually enjoined and restrained from:

17        (a) exchanging with or divulging to any competitor  
18 information concerning prices, discount terms, pricing  
19 intentions, pricing methods or any term or condition  
20 affecting the retail price of shoes which they sell;

21        (b) threatening to or in any way suggesting or  
22 indicating that it will discontinue or discontinuing  
23 buying shoes from any manufacturer because such manu-  
24 facturer is selling shoes to any other retailer;

25        (c) exchanging with or divulging to any manu-  
26 facturer of shoes information concerning or relating  
27 to price cutting by any retailer of shoes; and

28        (d) suggesting to or agreeing with any manu-  
29 facturer that such manufacturer should refuse to  
30 sell to a competing retailer of shoes or should take  
31 any action to compel or encourage any retailer to  
32 advertise or sell shoes at any particular price or a

price different from the price at which such retailer is selling shoes.

4. That defendant Penobscot, its successors, assignees and transferees, and its officers, directors, agents and employees, and all persons acting or claiming to act on behalf thereof, be perpetually enjoined and restrained from selling to any retailer of shoes on the condition, agreement or understanding that the retailer adhere to its suggested resale prices or to any other price, and from refusing to sell shoes which it manufactures to any retailer of shoes because the retailer adheres to or fails to adhere to any particular resale price.

5. That the defendants be required to take such further action as the Court may deem necessary and appropriate to terminate and dissipate the effects of the unlawful activities hereinabove alleged, and to permit and restore competition in the retail sale of shoes in the Albuquerque, New Mexico area.

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

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

John N. Mitchell  
JOHN N. MITCHELL  
Attorney General

LAWRENCE W. SOMERVILLE

Richard W. McLaren  
RICHARD W. McLAREN  
Assistant Attorney General

RICHARD E. NEUMAN

Baddia J. Rashid  
BADDIA J. RASHID

Attorneys, Department of Justice

JAMES J. COYLE

Attorneys, Department of Justice

VICTOR R. ORTEGA  
United States Attorney