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9 UNITED STATES DISTRICT COURT
10 NORTHERN DISTRICT OF CALIFORNIA

11 UNITED STATES OF AMERICA,)
12 Plaintiff,) Civil Action No. C-73-0300-CBR
13 v.) ANTITRUST (Sherman Act § 1,
14 SWIFT INSTRUMENTS, INC.,) 15 U.S.C. 1) COMPLAINT FOR
15 Defendant.) INJUNCTIVE RELIEF
16) Filed: Feb. 26, 1973

17 COMPLAINT

18 The United States of America, plaintiff, by its attorneys,
19 acting under the direction of the Attorney General of the
20 United States, brings this action against the above-named
21 defendant, and complains and alleges as follows:

22 I

23 JURISDICTION AND VENUE

24 1. This complaint is filed and this action is instituted
25 under Section 4 of the Act of Congress of July 2, 1890, as
26 amended (15 U.S.C. § 4), commonly known as the Sherman Act,
27 in order to prevent and restrain continuing violation by the
28 defendant, as hereinafter alleged, of Section 1 of that Act,
29 as amended (15 U.S.C. § 1).

30 2. The defendant maintains offices, transacts business, and
31 is found within the Northern District of California.
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II

THE DEFENDANT

3. Swift Instruments, Inc. (hereinafter referred to as "Swift"), a corporation organized and existing under the laws of the State of Massachusetts, with its principal place of business in Boston, Massachusetts, is made the defendant herein. Swift also maintains a plant and sales office in San Jose, California, which conducts all of Swift's microscope business.

III

CO-CONSPIRATORS

4. Numerous persons, not named as defendants, including manufacturers' representatives and dealers, participated with the defendant as co-conspirators in the offense hereinafter alleged, and performed acts and made statements in furtherance thereof.

IV

DEFINITIONS

5. As used herein:

- (a) "Microscopes" means microscopes and microscope parts and accessories, including lenses; and
- (b) "Person" means any individual, partnership, firm, corporation or other legal entity.

V

TRADE AND COMMERCE

6. Microscopes are used by a wide variety of industries, by the medical professions and by educational institutions. Microscopes vary in design, complexity and price according to their ultimate use. Swift microscopes are primarily sold to high schools and colleges. Such institutions and others annually spend nearly \$3,000,000 for Swift microscopes.

1 Approximately 95 percent of Swift microscopes are sold to
2 educational institutions.

3 7. Swift microscopes, primarily in the form of component
4 parts, are imported in substantial quantities by the defendant
5 from Japan to its plant in California, where they are assembled.
6 Substantial quantities of said microscopes are then sold and
7 distributed from the Swift plant in California to Swift dealers
8 located in nearly every state. Said dealers in turn resell
9 said Swift microscopes primarily to schools and colleges.
10 Educational institutions which purchase Swift microscopes do so
11 on a sealed bid or a competitive quote basis where any substantial
12 amount is involved. In addition, Swift makes bids and sells
13 to such educational institutions directly.

14 8. It has been the policy of Swift and its dealers,
15 whenever possible, to assist in or influence the preparation
16 of bid specifications for microscopes purchased by high schools
17 and colleges. As a result, in many cases only Swift microscopes
18 have met the specifications contained in bid invitations or
19 requests for quotations issued by high schools and colleges,
20 and thus only Swift and its dealers have been capable of
21 submitting bids conforming to such specifications.

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23 VI

24 VIOLATION ALLEGED

25 9. Beginning at least as early as 1962, the exact date
26 being to the plaintiff unknown, and continuing thereafter to
27 at least June 1970, the defendant and co-conspirators engaged
28 in a combination and conspiracy in unreasonable restraint of
29 the hereinabove described interstate and foreign trade and
30 commerce in microscopes in violation of Section 1 of the Act
31 of Congress of July 2, 1890, as amended (15 U.S.C. § 1),
32 commonly known as the Sherman Act.

1 10. The aforesaid combination and conspiracy consisted
2 of a continuing agreement, understanding, and concert of action
3 among the defendant and co-conspirators, the substantial terms
4 of which were that:

5 (a) Dealers would sell Swift microscopes at prices
6 fixed by Swift;

7 (b) Swift and its dealers would make bids to
8 educational institutions and other public
9 agencies at prices fixed by Swift;

10 (c) Dealers would report cases of price cutting or
11 bidding below list to Swift, which would
12 investigate and would cut off, or threaten
13 to cut off, the dealer who had sold or bid
14 at less than the fixed price;

15 (d) Where a dealer bid at below the fixed price,
16 Swift would require said dealer to withdraw
17 his bid or to surrender his profit to other
18 bidding dealers; and

19 (e) Only dealers designated as "Class A" would
20 be allowed to sell to schools and colleges,
21 and other dealers would be forbidden to
22 sell to schools and colleges.

23 11. Pursuant to and in effectuation of the aforesaid
24 combination and conspiracy, the defendant and the co-conspirators
25 did those things which, as hereinabove alleged, they combined
26 and conspired to do. Said combination and conspiracy may
27 continue unless the relief hereinafter prayed for is granted.
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1 VII

2 EFFECTS

3 12. The aforesaid combination and conspiracy has had
4 the following effects, among others:

- 5 (a) Customers, primarily schools and colleges,
6 have had to pay fixed and artificially high
7 prices for Swift microscopes;
- 8 (b) Schools and colleges have been deprived of
9 competitive bids in the purchase of microscopes;
- 10 (c) Competition in the sale of Swift microscopes
11 has been suppressed and eliminated; and
- 12 (d) Swift dealers not designated "Class A" have
13 been prevented from bidding and selling to
14 schools.

15 PRAYER

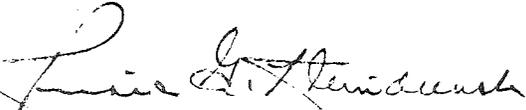
16 WHEREFORE, plaintiff prays:

17 1. That the Court adjudge and decree that the defendant
18 and co-conspirators have engaged in an unlawful combination
19 and conspiracy in restraint of the aforesaid interstate and
20 foreign trade and commerce in the sale of microscopes in
21 violation of Section 1 of the Sherman Act.

22 2. That the defendant, its officers, directors, agents,
23 and all other persons acting or claiming to act on its behalf
24 be perpetually enjoined and restrained from, in any manner,
25 directly or indirectly, continuing, maintaining, or renewing
26 the combination and conspiracy hereinabove alleged, or from
27 engaging in any other combination, conspiracy, contract,
28 agreement, understanding, or concert of action having a similar
29 purpose or effect, and from adopting or following any practice,
30 plan, program, or device having any similar purpose or
31 effect.
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1 3. That the plaintiff have such other and further
2 relief as the Court may deem just and proper.

3 4. That the plaintiff recover the costs of this suit.
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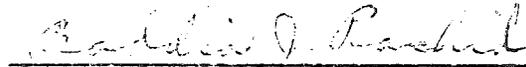
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