

1 MARQUIS L. SMITH
2 ANTHONY E. DESMOND
3 GARY R. SPRATLING
4 Antitrust Division
5 Department of Justice
6 450 Golden Gate Avenue - Room 16432
7 San Francisco, California 94102
8 (Telephone: 415-556-6300)

9 UNITED STATES DISTRICT COURT
10 NORTHERN DISTRICT OF CALIFORNIA

11 UNITED STATES OF AMERICA,)
12)
13 Plaintiff,) Civil Action No. C-73-0300-CBR
14)
15 v.) ANTITRUST (Sherman Act § 1,
16) 15 U.S.C. 1) COMPLAINT FOR
17 SWIFT INSTRUMENTS, INC.,) INJUNCTIVE RELIEF
18)
19 Defendant.) Filed: Feb. 26, 1973
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33 COMPLAINT

34 The United States of America, plaintiff, by its attorneys,
35 acting under the direction of the Attorney General of the
36 United States, brings this action against the above-named
37 defendant, and complains and alleges as follows:

38 I

39 JURISDICTION AND VENUE

40 1. This complaint is filed and this action is instituted
41 under Section 4 of the Act of Congress of July 2, 1890, as
42 amended (15 U.S.C. § 4), commonly known as the Sherman Act,
43 in order to prevent and restrain continuing violation by the
44 defendant, as hereinafter alleged, of Section 1 of that Act,
45 as amended (15 U.S.C. § 1).

46 2. The defendant maintains offices, transacts business, and
47 is found within the Northern District of California.

1 II

2 THE DEFENDANT

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

9 III

10 CO-CONSPIRATORS

11 4. Numerous persons, not named as defendants, including
12 manufacturers' representatives and dealers, participated with
13 the defendant as co-conspirators in the offense hereinafter
14 alleged, and performed acts and made statements in furtherance
15 thereof.
16

17 IV

18 DEFINITIONS

19 5. As used herein:

20 (a) "Microscopes" means microscopes and microscope
21 parts and accessories, including lenses; and

22 (b) "Person" means any individual, partnership,
23 firm, corporation or other legal entity.
24

25 V

26 TRADE AND COMMERCE

27 6. Microscopes are used by a wide variety of industries,
28 by the medical professions and by educational institutions.
29 Microscopes vary in design, complexity and price according to
30 their ultimate use. Swift microscopes are primarily sold to
31 high schools and colleges. Such institutions and others
32 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.

22 VI

23 VIOLATION ALLEGED

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

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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VII

EFFECTS

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

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

PRAYER

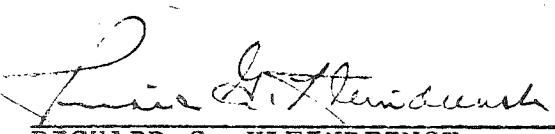
WHEREFORE, plaintiff prays:

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


2. That the defendant, its officers, directors, agents, and all other 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 combination and conspiracy hereinabove alleged, or from engaging in any other combination, conspiracy, contract, agreement, understanding, or concert of action having a similar purpose or effect, and from adopting or following any practice, plan, program, or device having any similar purpose or effect.

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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5 
6 RICHARD G. KLEINDEINST
7 Attorney General

ANTHONY E. DESMOND

8 
9 THOMAS E. KAUPER
10 Assistant Attorney General

GARY R. SPRATLING

Attorneys, Department of
Justice

11 
12 BADDIA J. RASHID

13 MARQUIS L. SMITH

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15 Attorneys, Department of Justice
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