

File

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA, :

Plaintiff, :

v. :

DANILOW PASTRY CO., INC., :

DAN-SAN PASTRY SHOP, INC., :

d/b/a BROADWAY PASTRY SHOP, : Civil Action No.: 82 C 3696

KREMO BAKING CO., INC., :

R.K. BAKING CORP., :

Filed: June 4, 1982

ACME CAKE CO., INC., :

WENS CAKE DISTRIBUTING CORP., :

MRS. MAC'S BAKING CO., INC., :

TEMTEE DONUTS, INC., :

Defendants. :

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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 action to obtain equitable relief against the defendants named herein 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 Sherman Act (15 U.S.C. § 4), 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 within the Southern District of New York.

II

DEFENDANTS

3. The corporations named below are made defendants herein. Each of the corporations is organized and exists under the laws of the state indicated and has its principal place of business in the city indicated:

<u>Name of Corporation</u>	<u>State of Incorporation</u>	<u>Principal Place of Business</u>
Danilow Pastry Co., Inc.	New York	Brooklyn, N.Y.
Dan-San Pastry Shop, Inc. d/b/a Broadway Pastry Shop	New York	Brooklyn, N.Y.
Kremo Baking Co., Inc.	New York	Brooklyn, N.Y.
R.K. Baking Corp.	New York	Brooklyn, N.Y.
Acme Cake Co., Inc.	New York	Brooklyn, N.Y.
Wens Cake Distributing Corp.	New York	Brooklyn, N.Y.
Mrs. Mac's Baking Co., Inc.	New Jersey	Newark, N.J.
Temtee Donuts, Inc.	New York	Brooklyn, N.Y.

III

CO-CONSPIRATORS

4. Various persons, not made defendants in this complaint, participated as co-conspirators in the offense charged herein and performed acts and made statements in furtherance thereof.

IV

DEFINITIONS

5. As used herein, the term:

- (a) "person" means any individual, partnership, corporation or other legal or business entity.
- (b) "New York metropolitan area" includes the City of New York and the counties of Nassau, Suffolk and Westchester in New York and parts of New Jersey.
- (c) "pastry" means baked or fried, fresh, sweet goods made primarily from flour, shortening, sugar and dairy products and includes, but is not limited to, danish, doughnuts, muffins, cookies, coffee cakes, layer cakes and pies.

- (d) "wholesale bakery" means a person engaged, in whole or in part, in the business of making any of the items defined as pastry for sale to jobbers, to other persons that sell pastry to jobbers, to institutional caterers, or to restaurants, luncheonettes, hospitals, schools, office cafeterias, or other businesses that resell pastry directly to the consumer.
- (e) "jobber" means a person, not a wholesale bakery or employed by a wholesale bakery, who is engaged, in whole or in part, in the business of distributing pastry to restaurants, luncheonettes, hospitals, schools, office cafeterias, or other businesses that resell pastry directly to the consumer.

V

TRADE AND COMMERCE

6. During all or part of the period of time covered by this complaint, Danilow Pastry Co., Inc., Dan-San Pastry Shop, Inc., d/b/a Broadway Pastry Shop, R.K. Baking Corp., Acme Cake Co., Inc., Mrs. Mac's Baking Co., Inc. and Temtee Donuts, Inc. were the major wholesale bakeries in the New York metropolitan area. Kremo Baking Co., Inc. is affiliated with Danilow Pastry Co., Inc. and distributes pastry for it. Wens Cake Distributing Corp. is affiliated with Acme Cake Co., Inc. and distributes pastry for it. Total sales by the defendant corporations from 1977 through 1980 were in excess of \$100 million.

7. Some of the defendant corporations located in New York sell and deliver daily substantial quantities of pastry to customers in New Jersey. Mrs. Mac's Baking Co., Inc., located in New Jersey, sells and delivers daily substantial quantities of pastry to customers in New York.

8. The defendant wholesale bakeries located in New York regularly sell substantial quantities of pastry to jobbers who each day drive from their places of business in New Jersey, Pennsylvania and Connecticut to the defendants' bakeries in New York to pick up their orders. The jobbers then return to their businesses and distribute the pastry to their customers.

9. Each of the defendant wholesale bakeries located in New York regularly purchases substantial quantities of raw materials, including flour, shortening and sugar, from suppliers located outside New York. Mrs. Mac's Baking Co., Inc., located in New Jersey, regularly purchases substantial quantities of raw materials from suppliers located outside New Jersey.

10. The activities of the defendants and co-conspirators, as described herein, are within the flow of interstate commerce and substantially affect interstate commerce.

VI

VIOLATION ALLEGED

11. From at least as early as the mid-1960s and continuing until at least March 1981, the exact dates being unknown to the plaintiff, the defendants and co-conspirators have engaged in a continuing combination and conspiracy in unreasonable restraint of the aforesaid interstate trade and commerce in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1. This violation may continue or recur unless the relief hereinafter prayed for is granted.

12. The aforesaid combination and conspiracy has consisted of a continuing agreement, understanding and concert of action among the defendants and co-conspirators, the substantial term of which was to raise and fix prices of pastry.

13. For the purpose of forming and effectuating the combination and conspiracy alleged in this complaint, the defendants and co-conspirators did those things which they combined and conspired to do.

VII

EFFECTS

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

- (a) price competition among the defendants and co-conspirators has been restrained; and
- (b) customers of the defendants and co-conspirators have been deprived of the benefits of free and open competition in the sale of pastry.

PRAYER

WHEREFORE, the plaintiff prays:


1. That the Court adjudge and decree that the defendants have engaged in an unlawful combination and conspiracy in unreasonable restraint of interstate trade and commerce, in violation of Section 1 of the Sherman Act.

2. That each of the defendants, its subsidiaries, successors, assigns, transferees, and the respective officers, directors, agents, and employees thereof, and all other persons acting or claiming to act on their behalf, be enjoined from directly or indirectly continuing, maintaining, or renewing the aforesaid combination and conspiracy or from engaging in any other combination and conspiracy having a similar purpose or effect, or from adopting or following any practice, plan, program, or device having a similar purpose or effect..

3. That the Court order each defendant periodically to advise each of its officers, directors and employees of the provisions of any judgment entered by this Court, and of its and their duties and obligations under that judgment and under the antitrust laws, and to file with the Court and with the plaintiff reports setting forth the steps each defendant has taken to comply with that judgment.


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 suit.



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