

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
) Civil No. G 75-558-CA 5
 v.)
) Filed: November 24, 1975
 AMERICAN PHARMACEUTICAL)
 ASSOCIATION; and)
 MICHIGAN STATE PHARMACEUTICAL)
 ASSOCIATION,)
)
 Defendants.)

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 above-named defendants and complains and alleges as follows:

I

JURISDICTION AND VENUE

1. This complaint is filed and this action 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, as amended (15 U.S.C. § 1).

2. The defendant American Pharmaceutical Association transacts business within the Western District of Michigan, Southern Division.

3. The defendant Michigan State Pharmaceutical Association maintains its principal office, transacts business, and is found within the Western District of Michigan, Southern Division.

II

DEFENDANTS

4. The American Pharmaceutical Association (hereinafter referred to as "APhA") is made a defendant herein. APhA, a national association of pharmacists, is a non-profit corporation organized and existing under the laws of the District of Columbia, where it maintains its principal place of business.

5. The Michigan State Pharmaceutical Association (hereinafter referred to as "MSPA") is made a defendant herein. MSPA, a state-wide association of pharmacists, is a non-profit corporation organized and existing under the laws of the State of Michigan. Its principal place of business is in Lansing, Michigan.

III

CO-CONSPIRATORS

6. Various other persons, organizations, entities and corporations not made defendants herein have participated as co-conspirators with the defendants in the combination and conspiracy hereinafter alleged, and have performed acts and have made statements in furtherance thereof. Such co-conspirators include, but are not limited to, members of defendants APhA and MSPA during all or part of the period covered by this complaint.

IV

TRADE AND COMMERCE

7. Prescription drugs are chemical compounds which by law may be dispensed only at the direction of persons licensed to prescribe them for use in the treatment of illness. A pharmacist is a person licensed by competent authority to dispense and sell prescription drugs. In 1974,

retail sales of prescription drugs in the United States were in excess of \$5 billion.

8. APhA has approximately 50,000 pharmacist members located throughout the United States. APhA has had a Code of Ethics since at least 1969. A section of that Code states, among other things, that a pharmacist should not solicit professional practice by advertising. An APhA member may be suspended or expelled from APhA for violation of its Code of Ethics.

9. MSPA has more than 3,400 pharmacist members, most of whom reside within the State of Michigan. MSPA is affiliated with APhA. Pharmacists who reside in Michigan are required by MSPA and APhA to join both associations if they wish to join either association. Dues for membership in both associations are collected by APhA. MSPA has had a Code of Ethics since at least 1969 which is identical to APhA's Code of Ethics. A MSPA member may be suspended or expelled from MSPA for violation of its Code of Ethics.

10. There is a regular, continuous, and substantial flow in interstate commerce of the prescription drugs dispensed and sold by the pharmacist members of both APhA and MSPA. The activities of APhA and MSPA and the members of both associations are within the flow of interstate commerce and have an effect upon that commerce.

V

VIOLATION ALLEGED

11. From at least 1969, the exact date being unknown to the plaintiff, and continuing up to and including the date of the filing of this complaint, the defendants and co-conspirators have been engaged in a combination and

conspiracy in unreasonable restraint of the aforesaid interstate trade and commerce in violation of Section 1 of the Sherman Act. This offense is continuing and will continue unless the relief hereinafter prayed for is granted.

12. The unlawful 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 and are:

- (a) that defendants and co-conspirators adopt, publish, and distribute a Code of Ethics containing a provision which in effect prohibits pharmacist members of both APhA and MSPA from price advertising of prescription drugs;
- (b) that the pharmacist members of both APhA and MSPA abide by said provision of the Code of Ethics; and
- (c) that the defendants and co-conspirators enforce said provision of the Code of Ethics.

13. For the purpose of forming and effectuating the aforesaid combination and conspiracy, the defendants and co-conspirators have done those things which, as hereinbefore alleged, they agreed to do.

VI

EFFECTS

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

- (a) price competition among pharmacist members of both APhA and MSPA in the sale of prescription drugs has been suppressed and eliminated;

- (b) pharmacist members of both APhA and MSPA have been restrained from providing price information in the advertising and sale of prescription drugs pursuant to their independent business judgments; and
- (c) purchasers of prescription drugs from pharmacist members of both APhA and MSPA have been deprived of the benefits of free and open competition in the advertising and sale of prescription drugs.

PRAYER

WHEREFORE, the plaintiff prays:

1. That the aforesaid combination and conspiracy in unreasonable restraint of interstate trade and commerce be adjudged and decreed to be in violation of Section 1 of the Sherman Act.
2. That each of the defendants, their officers, directors, trustees, agents, employees, members and successors and assigns, and all persons acting under, through, or for defendants be perpetually enjoined from continuing, maintaining, or renewing, directly or indirectly, the aforesaid combination and conspiracy, and from entering into, maintaining or participating in any contract, agreement, understanding, plan, program, or other arrangement having the purpose or effect of continuing, maintaining, or renewing such combination and conspiracy.
3. That the defendants be required to cancel Section 8 of their Code of Ethics and every other rule, bylaw, resolution, or statement of policy, which has as its purpose or effect the suppression or elimination of price competition among defendants' members.

4. That each defendant be directed to cause the publication of the text of any final judgment entered in this case and to furnish a copy of such final judgment to each of its members and to each individual or organization which hereafter becomes a member.

5. That each defendant be required to deny representation to any state or local association which has a Code of Ethics, rule, bylaw, resolution or statement of policy which restricts price advertising of prescription drugs.

6. 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.

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

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