

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF INDIANA

UNITED STATES OF AMERICA,)	
Plaintiff,)	Civil Action No. IP-72-C-215
v.)	Filed: 5/4/72
WAYNE CORPORATION,)	
Defendant.)	Equitable Relief Sought

COMPLAINT

The United States of America, by its attorneys, acting under the direction of the Attorney General of the United States, brings this action to obtain equitable relief against the defendant named herein and complains and alleges as follows:

I

JURISDICTION AND VENUE

1. This complaint is filed 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 continuing violation by the defendant, as hereinafter alleged, of Section 1 of the Sherman Act, as amended (15 U.S.C. § 1).

2. The defendant Wayne Corporation maintains offices, transacts business, and is found within the Southern District of Indiana.

II

THE DEFENDANT

3. Wayne Corporation (hereinafter referred to as "Wayne") is made a defendant herein. Wayne is a corporation organized

and existing under the laws of the State of Delaware, with its principal place of business in Richmond, Indiana. Wayne is a wholly owned subsidiary of Indian Head, Inc., of New York, New York. Wayne was organized in October 1968 after Indian Head, Inc. had acquired the business and assets of Divco-Wayne Corporation, the predecessor of Wayne. Each reference to Wayne herein shall include all subsidiaries, affiliates and predecessors of Wayne Corporation.

III

CO-CONSPIRATORS

4. Various persons, firms, and corporations not named as defendants herein, including but not limited to distributors of Wayne professional vehicles, have participated as co-conspirators with the defendant in the offense alleged herein.

IV

DEFINITIONS

5. As used herein:

- (a) "Professional vehicles" means all hearses, flower cars, and ambulances assembled by Wayne;
- (b) "Person" means any individual, corporation, partnership, firm, association, or other business or legal entity; and
- (c) "Distributor" means any person engaged, in whole or in part, in the purchase from Wayne of professional vehicles for resale or lease to others.

V

TRADE AND COMMERCE

6. Wayne assembles and sells professional vehicles. It sells professional vehicles directly to approximately 27 independent distributors located throughout the United States.

7. There is a continuous flow in interstate commerce of professional vehicles from plants of the defendant Wayne located in Piqua, Ohio and Blytheville, Arkansas to Wayne distributors located throughout the United States. In the fiscal year ended November 28, 1970, the gross sales of Wayne's professional vehicles to distributors amounted to about \$14.8 million.

VI

OFFENSE ALLEGED

8. Beginning at least as early as 1966, and continuing thereafter to the date of the filing of this complaint, the defendant and co-conspirators have been engaged in a combination and conspiracy in unreasonable restraint of the above described interstate trade and commerce in Wayne professional vehicles in violation of Section 1 of the Sherman Act (15 U.S.C. § 1). This offense is continuing and will continue unless the relief hereinafter prayed for is granted.

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

- (a) Distributors will resell or lease Wayne professional vehicles only within an exclusive territory allocated to it by Wayne, and not to any customer located in another distributor's territory;
- (b) Wayne will require distributors to refrain from, or to discontinue, sales and leases of Wayne professional vehicles to customers located in another distributor's territory;
- (c) In the event of a sale or lease of a Wayne professional vehicle by a distributor to a customer located in another distributor's territory, Wayne will require the selling or leasing distributor to pay a territorial infringement penalty to the distributor in whose territory the customer is located;
- (d) Distributors will refrain from publicly advertising the resale prices of Wayne professional vehicles; and
- (e) Wayne will, from time to time, participate in the determination of the resale prices of Wayne professional vehicles to particular customers who may be located in the territory of more than one distributor.

10. For the purpose of effectuating and carrying out the aforesaid unlawful combination and conspiracy, the defendant and co-conspirators have done the things which, as herein alleged, they conspired and agreed to do.

VII
EFFECTS

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

- (a) Competition in the sale and distribution of Wayne professional vehicles has been suppressed, restrained, and eliminated;
- (b) Distributors have been prevented from reselling or leasing Wayne professional vehicles to customers of their own choice;
- (c) Purchasers or lessees of Wayne professional vehicles have been deprived of the opportunity to purchase or lease professional vehicles from distributors of their own choice in a free and competitive market; and
- (d) Prices of Wayne professional vehicles have been maintained at arbitrary and non-competitive levels.

PRAYER

WHEREFORE, Plaintiff prays:

1. That the Court adjudge and decree that the defendant and co-conspirators have combined and conspired to unlawfully restrain interstate trade and commerce in Wayne professional vehicles in violation of Section 1 of the Sherman Act.
2. That the defendant, its successors, assigns, subsidiaries, affiliates and transferees, and the respective officers, directors, agents and employees thereof, and all other persons, acting or claiming to act on its behalf, be perpetually enjoined from in any manner, directly or indirectly:
 - (a) Continuing, reviving, or renewing the aforesaid combination and conspiracy, and from entering into or engaging in

any practices or agreements having a like or similar purpose or effect;

- (b) Entering into any agreement, arrangement, understanding or concerted activity, in relation to the resale or lease of professional vehicles by distributors, to:
 - (i) allocate or divide territories between or among distributors;
 - (ii) require the payment of any territorial infringement penalty by one distributor to another distributor;
 - (iii) prevent the advertisement of prices by distributors; and
 - (iv) fix or stabilize any distributor's resale or lease price to any customer of any distributor.

3. That the defendant be ordered to take all necessary action to effect the cancellation of, or to revise or amend each provision of every contract or agreement between the defendant and distributors of professional vehicles which is contrary to or inconsistent with any provision of the Final Judgment entered herein.

4. That the defendant be ordered to notify distributors handling Wayne professional vehicles that they may sell such products at such prices, to such persons, and in such areas as they may freely choose.

5. That the plaintiff have such other and further relief as the nature of this action may require and as the Court may deem just and appropriate.

6. That the plaintiff recover its taxable costs.

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