

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	Civil No. C-76-566
v.)	
)	Filed: June 7, 1976
E. I. Du PONT De NEMOURS &)	
CO., INC.,)	
)	
Defendant.)	

COMPLAINT

The United States of America, plaintiff, by its attorneys, acting under the direction of the Attorney General of the United States, brings this civil action to obtain equitable relief against the above-named defendant 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 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 violation by the defendant, as hereinafter alleged, of Section 1 of the Sherman Act, as amended (15 U.S.C. § 1).

2. The defendant transacts business and is found within the Eastern Division of the Northern District of Ohio.

II

DEFENDANT

3. E. I. Du Pont de Nemours & Co., Inc. (hereinafter referred to as "Du Pont") is made the defendant herein. The defendant is a corporation organized and existing under

the laws of the State of Delaware with its principal place of business in Wilmington, Delaware. Du Pont is a major manufacturer of consumer paint under the Lucite trademark.

III

CO-CONSPIRATORS

4. Various other individuals, partnerships, corporations and other legal entities, including retailers of Lucite consumer paint, not made defendants herein, have participated as co-conspirators in the violation alleged herein and have performed acts and made statements in furtherance thereof.

IV

TRADE AND COMMERCE

5. Lucite consumer paint is manufactured by Du Pont at five (5) locations in the United States and sold to retailers throughout the United States, primarily through warehouses which are owned or operated by Du Pont. Du Pont's total annual dollar volume of sales of Lucite consumer paint in 1973 was approximately \$36,400,000. Retailers sell Lucite consumer paint to consumers generally for their own use.

6. Lucite consumer paint is manufactured and sold for use on numerous items including the interior and exterior of houses and buildings. It is marketed as wall paint, house paint, and interior and exterior enamel paint.

7. In its cooperative advertising program, Du Pont offers to reimburse a retailer the cost of advertising certain products, including Lucite consumer paint, up to a specified percentage of the net purchases made by the retailer from Du Pont in the previous calendar year.

Du Pont's 1973 dollar volume of advertising reimbursements for Lucite consumer paint was approximately \$2 million.

8. In order for an advertisement to qualify for reimbursement under the cooperative advertising program, there must be compliance with a number of conditions. The advertisement must appear in media approved by Du Pont and must make appropriate use of the pertinent trademarks. During specified periods of each year from at least 1970 through September 1974, Du Pont also required that if a price for Lucite consumer paint was specified in the retailer's advertisement, the price had to be the same as or higher than prices established by Du Pont and made known in advance to the retailer. Thus, during these periods, if a retailer chose to advertise Lucite consumer paint at a price lower than that set by Du Pont, he would not be reimbursed for the cost of the advertisement. At all times since the program was instituted, all advertisements that contained no reference to price and which met the remaining criteria were reimbursable under the plan.

9. There is a regular, continuous, and substantial flow in interstate commerce of Lucite consumer paint from the locations of manufacture to the ultimate consumers throughout the United States.

V

VIOLATION ALLEGED

10. From at least 1970, the exact date being unknown to the plaintiff, and continuing at least until September 1974, the defendant and co-conspirators 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. Said combination and conspiracy may continue or reoccur unless the relief hereinafter prayed for is granted.

11. The unlawful combination and conspiracy has consisted of a continuing agreement, understanding, and concert of action between Du Pont and co-conspirators, the substantial terms of which were:

- (a) during specified periods of the year, Du Pont would reimburse retailers of Lucite consumer paint the cost of advertising such paint if their advertisements did not indicate prices lower than those established by Du Pont; and
- (b) during specified periods of the year, retailers of Lucite consumer paint would refrain from advertising such paint at prices lower than those established by Du Pont.

12. For the purpose of forming and effectuating the aforesaid combination and conspiracy, the defendant and co-conspirators did those things which, as hereinbefore alleged, they combined and conspired to do.

VI

EFFECTS

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

- (a) price competition among retailers who advertise Lucite consumer paint has been suppressed;

- (b) retailers have agreed to advertise Lucite consumer paint at prices set by the defendant; and
- (c) consumers have been denied the benefits of unrestricted price competition among retailers who advertise Lucite consumer paint.

PRAYER

WHEREFORE, plaintiff prays:

1. That the aforesaid combination and conspiracy be adjudged and decreed to be unlawful and in violation of Section 1 of the Sherman Act.
2. That the defendant, its successors, assigns, subsidiaries, officers, directors, agents, and employees, 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, renewing, or reviving the aforesaid illegal combination and conspiracy, and from engaging in any other combination, conspiracy, agreement, understanding, or concert of action having a similar purpose or effect and from adopting or following any practice, plan, program or device having a similar purpose or effect.
3. That defendant Du Pont be required to notify all of its retailers that they may advertise Lucite consumer paint at such prices as they may choose and to furnish a copy of the Final Order of this Court to each retailer.

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 its taxable costs.

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