

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
v.)
)
SOCIETE NATIONALE DES POUDRES)
)
ET EXPLOSIFS, and)
)
FAYETTE CHEMICAL CORPORATION,)
)
Defendants.)

Civil Action No. 80-C10-149
Filed: 1/18/80

C O M P L A I N T

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 against the above named defendants to obtain equitable relief and complains and alleges as follows:

I

JURISDICTION AND VENUE

1. This complaint is filed, and this action is instituted, against the defendants by the United States of America 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 violations, as hereinafter alleged, by the defendants of Section 1 of the Sherman Act, as amended (15 U.S.C. § 1).

2. Each of the defendants transacts business and is found in the District of New Jersey.

II

DEFENDANTS

3. Societe Nationale des Poudres et Explosifs (hereinafter referred to as "SNPE") is made a defendant herein. SNPE is organized and exists under the laws of the Republic of France and has its principal place of business in Paris, France. During the period covered by this complaint, SNPE has solicited sales for industrial nitrocellulose in the United States, sent employees to the United States to further its sales of industrial nitrocellulose, shipped industrial nitrocellulose into the United States, received substantial revenues from the sale of industrial nitrocellulose in the United States, and maintained a sales agent in New Jersey.

4. Fayette Chemical Corporation (hereinafter referred to as "Fayette") is made a defendant herein. Fayette is organized and exists under the laws of New Jersey and has its principal place of business in Wood Ridge, New Jersey. It is a wholly owned subsidiary of Polychrome Corporation. During the period of time covered by this complaint, Fayette acted as the exclusive sales agent in the United States for industrial nitrocellulose, on behalf of SNPE and other foreign manufacturers. Additionally, Fayette stored industrial nitrocellulose in New Jersey for shipment to other states in the United States.

III

CO-CONSPIRATORS

5. Various individuals, groups, firms, and corporations not named as defendants herein have participated as co-conspirators in the violations hereinafter alleged, and have performed acts and made statements in furtherance thereof.

IV

DEFINITIONS

6. As used herein, the term:

- (a) "Industrial nitrocellulose" means a dry, amorphous, yellow-white synthetic resin produced by the chemical action of nitric acid on cellulose. Commonly made from the cellulose found in wood pulp or cotton linters, nitrocellulose is classified by its uses and has a nitrogen content between 8 and 12.2 percent. Industrial nitrocellulose is different from nitrocellulose used in explosives.
- (b) "SIPE" means Societa Italiana Prodotti Esploidenti, S.p.A., a company organized and existing under the laws of the Italian Republic with its principal place of business in Milan, Italy.
- (c) "Foreign producers" means producers of industrial nitrocellulose organized under the laws of a country other than the United States.
- (d) "Pool" means six foreign producers who entered into an association for the purpose of coordinating export sales of industrial nitrocellulose to the United States. Members of the pool were SNPE, SIPE, Bofors, Wasag Chemie GmbH, Explosivos Rio Tinto, and Mazzuchelli Celluloide, S.p.A.

V

TRADE AND COMMERCE

A. The Nitrocellulose Industry

7. Industrial nitrocellulose is used in combination with other chemicals as a bonding agent in various coatings. Applied in solutions, industrial nitrocellulose forms hard, smooth

finishes known for their short drying time and attractive appearance. Industrial nitrocellulose is widely used in wood lacquers, finishes, paints, primers, textile and paper coatings, book bindings, printing inks, cellophane film coatings, and fingernail polishes.

8. Industrial nitrocellulose, after it is manufactured, is "wet down" with alcohol (to make a formulation 70% nitrocellulose and 30% alcohol) before it is shipped. In the United States, industrial nitrocellulose is usually shipped in 55 gallon steel drums.

9. Industrial nitrocellulose is not used until it is formulated into one of a variety of solvent solutions. Large consumers formulate specialized industrial nitrocellulose solutions for their own needs, but small consumers rely on a sub-industry of "cutters" for specialized products. Cutters depend on industrial nitrocellulose as the basic ingredient of their solvent solution products.

10. Before July 1977, Hercules Incorporated ("Hercules") and E. I. duPont de Nemours and Company, Incorporated ("duPont") produced and sold all the industrial nitrocellulose used in the United States. On July 19, 1977, duPont announced its decision to discontinue the production and sale of industrial nitrocellulose at the end of 1977. This decision left Hercules as the sole domestic industrial nitrocellulose producer.

11. Shortly after the duPont announcement, several foreign producers, especially in Europe, considered the possibility of selling this product in the United States. In the fall of 1977, six of these foreign producers formed a pool to coordinate their sales of industrial nitrocellulose to the United States.

12. In 1977, SNPE negotiated and entered on behalf of the pool an agency agreement with Fayette, which was approved by Polychrome Corporation. As announced in 1977, this agreement provided that Fayette was the exclusive sales agent in the United States for defendant SNPE, SIPE, and four other foreign producer pool members. In accordance with this agreement, Fayette has solicited and made sales of industrial nitrocellulose in the United States, including New Jersey, and arranged for shipping and customs clearance for SNPE and SIPE industrial nitrocellulose in the United States, including New Jersey.

13. In 1977, approximately 64 million pounds of industrial nitrocellulose were sold in the United States. Sales of industrial nitrocellulose in the United States pursuant to the pool arrangement began in the last two months of 1977.

14. In 1978, approximately 64 million pounds of industrial nitrocellulose were sold in the United States. Over 10 percent of these sales were made pursuant to the pool arrangement.

15. In 1978, defendant Fayette received substantial commissions from sales of substantially all SNPE and SIPE industrial nitrocellulose sold in the United States.

B. Interstate Commerce

16. Throughout the period of time of the violation alleged herein, defendant SNPE and defendant Fayette have continuously sold industrial nitrocellulose in the interstate and foreign trade and commerce of the United States. Their sales of industrial nitrocellulose have had a substantial effect on the interstate and foreign trade and commerce of the United States.

VI

VIOLATIONS ALLEGED

17. Beginning as early as September 1977 and continuing thereafter until at least November 1978, the exact dates

being presently unknown to the plaintiff, the defendants and co-conspirators engaged in a combination and conspiracy in unreasonable restraint of the above described interstate trade and commerce in violation of Section 1 of the Sherman Act.

18. The aforesaid combination and conspiracy consisted of a continuing agreement, understanding, and concert of action among defendants and co-conspirators by means of the pool and otherwise to fix the price and allocate the sales of industrial nitrocellulose imported for sale in the United States by defendants and co-conspirators.

19. In forming and effectuating the aforesaid combination and conspiracy, the defendants and co-conspirators did those things which, as hereinbefore alleged, they combined and conspired to do.

VII

EFFECTS

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

- (a) Prices of industrial nitrocellulose sold by the defendant corporations and their co-conspirators were fixed and maintained at artificial and non-competitive levels;
- (b) Competition in the sale of industrial nitrocellulose to purchasers in the United States was restrained;
- (c) United States purchasers of industrial nitrocellulose have been deprived of free and open competition in the sale of industrial nitrocellulose.

VIII

PRAYER

WHEREFORE, the plaintiff prays:


1. That the Court adjudge and decree that the defendants have engaged in a combination and conspiracy to fix prices in unreasonable restraint of American interstate and foreign trade and commerce in violation of Section 1 of the Sherman Act.

2. That the defendants and all persons acting or claiming to act on their behalf each be permanently enjoined and restrained from, in any manner, directly or indirectly, continuing, maintaining, or renewing the violation alleged in this complaint, or from engaging in or participating in any other practices, contracts, agreements, or understandings, or claiming any rights thereunder, having the purpose or effect of continuing, reviving, or renewing any of the aforementioned violations or any violations similar thereto.

3. That the plaintiff have such other and further relief as the Court may deem just and proper.

4. That the plaintiff recover the costs of this action.

Dated:



JOHN H. SHENEFIELD
Acting Associate Attorney General



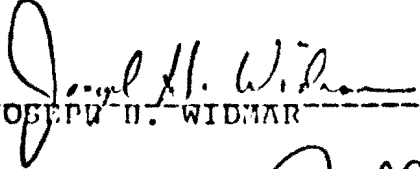
KEVIN R. SULLIVAN





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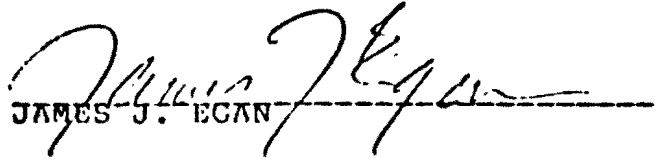

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