

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA,
Plaintiff,
v.
EVANS PRODUCTS COMPANY,
Defendant.

CIVIL ACTION NO. 70-C-540
Equitable Relief Sought
Filed March 6, 1970

COMPLAINT

The United States of America, plaintiff, by its attorneys, 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 under Section 4 of the Act of Congress of July 2, 1890 (15 U.S.C. § 4), as amended, commonly known as the Sherman Act, in order to prevent and restrain the continuing violations by the defendant, as hereinafter alleged, of Sections 1 and 2 of said Act (15 U.S.C. §§ 1 and 2).

2. The defendant Evans Products Company maintains an office, transacts business, and is found within the Northern District of Illinois, Eastern Division.

II

THE DEFENDANT

3. Evans Products Company, hereinafter referred to as Evans, is made the defendant herein. Evans is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business in Portland, Oregon.

III

TRADE AND COMMERCE

4. Evans is a major producer of railroad transportation equipment, and is a leading firm in the rail-car damage prevention equipment field. Damage prevention equipment consists of (a) crossbars and bulkheads placed in railway boxcars which keep freight from shifting in position, and (b) cushion underframes which cushion the impact between railroad cars. Evans also manufactures freight car doors, rail-car brakebeams, insulated car liner panels, side-fillers, and other railway safety

devices. Evans is a substantial factor in rail-car rebuilding, and in non-tank rail-car leasing. In 1967 approximately \$67,000,000 of Evans' total sales of \$281,389,000 were accounted for by the sale or leasing of railroad transportation equipment, and in 1968 approximately \$49,000,000 of its total sales of \$341,664,000 were accounted for by the sale or leasing of railroad transportation equipment.

5. Evans is also a major producer and distributor of plywood, plywood veneers, mouldings, wall panels, hardboard, particle board, battery separators, and pre-cut houses and commercial buildings. In addition, Evans distributes building products and materials made by others. A substantial portion of the products distributed by Evans move by rail.

6. In 1965, and each year thereafter, Evans has shipped in excess of 40,000 carloads of its products over various railroad lines, all of which railroads are substantial purchasers of railroad transportation equipment.

7. Evans purchases substantial quantities of numerous commodities, raw materials, equipment, supplies

and services from other producers for use in the production of its railroad transportation equipment and other products, and in the operation of its plants and offices. The commodities, raw materials, equipment, supplies and services purchased by Evans from other producers are shipped from their points of production in interstate commerce across State lines to their points of use by Evans. Raw materials produced and purchased by Evans are shipped across State lines in interstate commerce and in foreign commerce to Evans' manufacturing and fabricating plants and to Evans' customers. Products produced or fabricated by Evans and by its various Divisions are shipped in a continuous flow in interstate commerce across State lines to jobbers, contractors, branch stores, dealers, warehouses, construction sites, processors, fabricators, wholesalers, and other customers.

IV

OFFENSES CHARGED

8. Since at least as early as 1958, and continuing to the date of this complaint, the defendant has violated Section 1 of the Sherman Act by entering into combinations involving reciprocal purchasing arrangements with respect

to a substantial amount of interstate commerce whereby the defendant purchased shipping space for its goods from various railroads upon the understanding that said railroads would purchase the goods and services of the defendant, in unreasonable restraint of the aforesaid trade and commerce.

9. Since at least as early as 1958 and continuing to the date of this complaint, the defendant, through the use of its purchasing power, has violated Section 2 of the Sherman Act by attempting to monopolize that part of the above-described interstate trade and commerce consisting of the requirements of actual and potential railroad supplier-customers of the defendant for railroad transportation equipment sold by defendant.

10. Pursuant to the aforesaid combinations and the attempt to monopolize, the defendant has done, among other things, the following:

- (a) Compiled and coordinated purchase and sales data and other information relating to its railroad customers and suppliers;
- (b) Utilized this information to determine which railroads should be favored and the

extent to which they should be permitted to participate in supplying defendant's requirements of shipping space for its goods;

- (c) Discussed with actual and potential railroad customers their sales and purchase positions relative to the defendant;
- (d) Shipped its goods over railroads on the understanding that such railroads would purchase goods or services from the defendant; and
- (e) Refused to buy or reduced purchases of shipping space from certain railroads which did not purchase railway equipment from the defendant.

V

EFFECTS

11. The aforesaid violations by the defendant have had the following effects, among others:

- (a) Competitors of the defendant Evans in the sale of railway equipment have

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been foreclosed from selling substantial quantities thereof to railroads that are supplier-customers of the defendant; and

- (b) Actual and potential railroad suppliers of shipping space purchased by the defendant have been foreclosed from selling substantial quantities of such shipping space to the defendant.

PRAYER

WHEREFORE, the plaintiff prays:

1. That the aforesaid combinations between the defendant and its railroad customers and suppliers involving reciprocal purchasing arrangements be adjudged and decreed to be in violation of Section 1 of the Sherman Act.

2. That the aforesaid attempt to monopolize be adjudged and decreed to be in violation of Section 2 of the Sherman Act.

3. That the defendant Evans and its officers, directors, agents, and all other persons acting on behalf of said defendant be perpetually enjoined from:

- (a) Communicating to Evans' actual or potential customers or suppliers that it favors suppliers who purchase products from Evans, or communicating to such persons statistics which point out or compare purchases of goods or services by Evans from such firms with sales of Evans to such firms;
- (b) Entering into or adhering to any contract, agreement, or understanding with any actual or potential customer or supplier involving reciprocal purchasing arrangements;
- (c) Continuing the practice of compiling statistics which compare purchases from persons who supply goods or services to Evans with sales of Evans to such suppliers;
- (d) Transmitting to personnel with sales responsibilities, information concerning purchases by the defendant from particular

companies, transmitting to personnel with purchasing responsibilities, information concerning sales by Evans to particular companies, and otherwise implementing a program involving reciprocity.

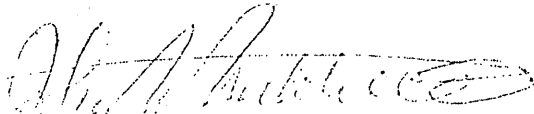
4. That this Court order the defendant Evans and its officers and directors to withhold from Evans' sales and purchasing personnel all information of the type which could not be transmitted to such personnel under paragraph 3(d) of this Prayer for Relief.

5. That this Court order the defendant Evans to advise all of its suppliers, by written notice, that the defendant's reciprocity or trade relations activities have been terminated, and to furnish a copy of the Final Order of this Court to all of its suppliers.

6. That plaintiff have such other 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
action.

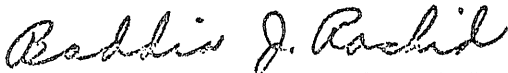
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