

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA, )  
 )  
 Plaintiff, )  
 v. )  
 UNITED PARCEL SERVICE OF )  
 AMERICA, INC., )  
 Defendant. )

Civil No. 73-1773

Filed: August 3, 1973

COMPLAINT

The United States of America, by its attorneys, acting under the direction of the Attorney General of the United States, brings this civil action against the defendant named herein, 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 further violations by the defendant, as hereinafter alleged, of Section 1 of the Sherman Act (15 U.S.C. § 1).

2. The defendant, through its wholly-owned subsidiary United Parcel Service, Inc. (New York), maintains an office, transacts business, and is found within the Eastern District of Pennsylvania.

II

THE DEFENDANT

3. United Parcel Service of America, Inc. (hereinafter referred to as "UPS") is made the defendant herein. UPS is a corporation organized and existing under the laws of

the State of Delaware, with its principal office located at 643 West 43d Street, New York, New York. UPS is engaged in the wholesale package delivery business in Pennsylvania and the Philadelphia-Camden Metropolitan Area through its wholly-owned subsidiary United Parcel Service, Inc. (New York). Whenever hereinafter used, the term UPS shall include its subsidiary United Parcel Service, Inc. (New York) and all other subsidiaries, affiliates, and predecessors of UPS.

### III

#### CO-CONSPIRATORS

4. Various corporations, partnerships, and individuals, including, but not limited to, Hourly Messengers, Inc. (hereinafter referred to as "HM"), and Alvin Rosenberg (past president and principal owner of HM and hereinafter referred to as "Rosenberg"), not made defendants herein, participated as co-conspirators in the violation hereinafter alleged and performed acts and made statements in furtherance thereof.

### IV

#### DEFINITIONS

5. As used herein, the term:
- (a) "Wholesale package delivery" means the regularly scheduled pickup and delivery of small packages and parcels, usually under 50 pounds in weight and of limited dimensions, from wholesale to

retail business establishments and between various business establishments, such as manufacturers, manufacturers' agents, jobbers, and commercial distributors, and their customers. Wholesale package delivery does not include the pickup and delivery of small packages and parcels from retail business establishments to their customers;

- (b) "Philadelphia-Camden Metropolitan Area" means the City of Philadelphia, the area of Pennsylvania within 25 miles of the Philadelphia City Hall, and the area of New Jersey included in the corporate limits of Camden, Gloucester City, Woodlynne, Merchantville, and Palmyra Boroughs, and the area of Pennsauken Township in Camden County.

V

TRADE AND COMMERCE

6. Wholesale package delivery by motor carrier is regulated in some aspects by appropriate federal and state agencies. In order to conduct wholesale package delivery operations in Pennsylvania, a carrier such as UPS, must receive authority from the Pennsylvania Public Utilities Commission (hereinafter referred to as "PUC") to do business in the state. The carrier must also obtain from the PUC a certificate of public convenience which defines the geographical area in which it has the right to operate and enumerates the commodities which can be transported. In order to conduct wholesale package delivery operations interstate, a carrier must receive a certificate of public convenience and necessity from the Interstate Commerce Commission (hereinafter referred to as "ICC"). Under an

exception set out in the Interstate Commerce Act (49 U.S.C. §303(b)(8)), a carrier can conduct interstate wholesale package delivery operations without such certificate within commercial zones encompassing certain cities and surrounding suburbs.

7. In 1958, UPS filed applications with the PUC for permission to engage in the wholesale package delivery business in Pennsylvania, and for operating rights in that state, and application with the ICC for operating rights between points in Pennsylvania, New Jersey and Delaware. The application filed with the ICC was withdrawn shortly thereafter. In April 1960, the applications filed with the PUC were approved and UPS obtained operating rights to transport small packages and parcels in an 18 county area of eastern Pennsylvania. In February 1963, UPS received additional operating rights enabling it to transport packages and parcels between all points in Pennsylvania. In 1967 because of a labor strike, UPS was forced to discontinue wholesale package delivery operations in the area under the jurisdiction of the striking union. Upon termination of the strike in 1970, UPS resumed wholesale package delivery operations in that area.

8. HM began wholesale package delivery operations in September 1940 after having received authority from the PUC to transport commodities, generally limited to medical and optical supplies, medicine and merchandise pertaining to curative objectives, dental supplies, health food, photo and photo engraving supplies (hereinafter referred to as "drug, dental, and photo supplies") and special delivery

packages (packages picked up and delivered on the same day) between points in the City and County of Philadelphia and from points in the City and County of Philadelphia to points within 25 miles of the Philadelphia City Hall. In January 1958, HM received additional operating rights from the PUC enabling it to transport small packages and parcels, without commodity restriction, from the City of Philadelphia to points outside the 25 mile radius circle within an area extending to and including the Cities of Lancaster, Reading, Allentown, and Easton, Pennsylvania. In 1958, HM also applied to the ICC for operating rights in Pennsylvania, New Jersey and Delaware. This application was withdrawn shortly thereafter. Because of the labor strike which forced UPS to discontinue wholesale package delivery operations in parts of Pennsylvania, including the Philadelphia-Camden Metropolitan Area, HM in August 1967 applied to the PUC for authority to transport packages and parcels in a 12 county area of eastern Pennsylvania. This application was protested by UPS, then amended by HM to encompass only the area where UPS was not operating as a result of the strike, and granted as amended by the PUC in October 1967.

9. For most of the period covered by this complaint, HM and UPS accounted for more than 90 percent of the wholesale package delivery business in the Philadelphia-Camden Metropolitan Area. Within this area, HM was the principal carrier until the entry of UPS in 1960. Thereafter, as a result of the combination and conspiracy hereinafter alleged, UPS became the major carrier. As a result of the 1967 strike against UPS and the new authority HM was awarded

in October 1967, HM again became the principal common carrier in the wholesale package delivery business in the Philadelphia-Camden Metropolitan Area. Upon termination of the strike in 1970, UPS reentered the market and again quickly became the major carrier in this business.

10. In 1960, HM had gross operating revenues in excess of \$525,000 and UPS had gross operating revenues from wholesale package delivery in Pennsylvania in excess of \$39,000. In 1961, HM's revenues decreased to less than \$445,000, while UPS' revenues from wholesale package delivery increased to over \$1,600,000 in Pennsylvania. In 1967, HM had gross operating revenues in excess of \$1,160,000, while UPS' revenues from wholesale package delivery in Pennsylvania were in excess of \$6,225,000.

11. A substantial volume of the wholesale package delivery business of UPS and HM consisted of packages picked up in New Jersey and delivered in Pennsylvania and of packages picked up in Pennsylvania and delivered in New Jersey. All packages picked up in either Pennsylvania or New Jersey and delivered in the other state moved in the continuous and uninterrupted flow of interstate commerce.

12. A substantial volume of the wholesale package delivery business of UPS and HM consisted of packages picked up in New Jersey and delivered in New Jersey. Both HM and UPS, throughout the period covered by this complaint, had offices, warehouses, and operation centers in Philadelphia, and garaged their pickup and delivery trucks serving the Philadelphia-Camden Metropolitan Area in Philadelphia. The pickup and delivery of packages within the area of New Jersey included in the Philadelphia-Camden Metropolitan Area

consists of trucks driven from Pennsylvania to New Jersey to pick up packages, trucks loaded with packages driven back to Pennsylvania where packages were unloaded, commingled, sorted, and then loaded aboard delivery trucks, and delivery trucks driven across the Pennsylvania-New Jersey state line for package delivery in New Jersey. Packages picked up in the area of New Jersey within the Philadelphia-Camden Metropolitan Area for delivery in the same area moved in the continuous and uninterrupted flow of interstate commerce.

## VI

### VIOLATION ALLEGED

13. Beginning sometime in early 1958 and continuing thereafter at least up to December 1969, the exact dates being unknown to the plaintiff, the defendant and co-conspirators entered into and engaged in an unlawful combination and conspiracy in restraint of the aforesaid interstate trade and commerce in wholesale package delivery in violation of Section 1 of the Act of Congress of July 2, 1890, as amended (15 U.S.C. § 1), commonly known as the Sherman Act.

14. The aforesaid combination and conspiracy consisted of a continuing agreement, understanding, and concert of action among the defendant and co-conspirators, the substantial terms of which, among others, were that:

- (a) HM would restrict and limit its wholesale package delivery business to the transportation of drug, dental, and photo supplies, and would discontinue transportation services outside the Philadelphia-Camden Metropolitan Area;

- (b) UPS would not solicit the transportation of drug, dental, and photo supplies from customers continued to be served by HM within the Philadelphia-Camden Metropolitan Area and UPS would discourage such customers from requesting UPS to transport such commodities within the Philadelphia-Camden Metropolitan Area;
- (c) Rosenberg and the transportation companies owned and controlled by him, including HM, would not conduct special delivery wholesale package delivery operations at a rate lower than 75 cents per package;
- (d) HM and UPS would withdraw their 1958 applications before the ICC for operating rights between points in Pennsylvania, New Jersey and Delaware;
- (e) HM would withdraw its protest against UPS' 1958 application before the PUC for operating rights and would not file protests against future UPS applications before the PUC or the ICC;
- (f) HM would not solicit any new business from shipper-witnesses intended to be called by UPS in support of UPS' 1958 application before the PUC for operating rights;
- (g) Rosenberg and the transportation companies owned and controlled by him, including HM, would not seek to extend or expand their wholesale package delivery operations beyond the agreed upon limitations with



UPS unless such extension or expansion was acceptable to UPS;

- (h) UPS would pay to Rosenberg a penalty of 5 percent of the gross revenues realized from the transportation of any drug, dental, and photo supplies within the Philadelphia-Camden Metropolitan Area for a shipper who, 6 months prior to such transportation, was a customer of HM;
- (i) HM would amend and limit its August 1967 application for operating rights before the PUC so as to apply only for operating rights in the particular area in and around the Philadelphia-Camden Metropolitan Area under the jurisdiction of the union then striking UPS;
- (j) HM, in hearings before the PUC on its August 1967 application for operating rights, would refrain from alleging that the need for their services resulted from anything other than discontinuance of service by UPS as a result of the labor strike against UPS; and
- (k) UPS would pay Rosenberg \$22,000 per year for ten years.

15. In furtherance of the aforesaid combination and conspiracy, defendant and co-conspirators did substantially those things they combined and conspired to do. Said combination and conspiracy may continue unless the relief hereinafter prayed for is granted.

## VII

### EFFECTS

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

- (a) Actual and potential competition between the defendant and HM in the wholesale package delivery business has been restrained and suppressed;
- (b) Actual and potential shipper-customers of defendant and HM have been deprived of the opportunity to ship small packages and parcels in an open and competitive market;
- (c) The price of special delivery wholesale package delivery by HM has been stabilized and maintained at artificial and non-competitive levels; and
- (d) The flow of small packages and parcels between points in New Jersey and Pennsylvania and within New Jersey and Pennsylvania has been impeded and restrained.

### PRAYER

WHEREFORE, plaintiff prays:

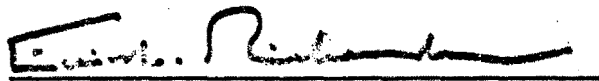
- 1. That the Court adjudge and decree that the defendant and co-conspirators have combined and conspired to unreasonably restrain the above-described interstate commerce in violation of Section 1 of the Sherman Act.

2. That the defendant be perpetually enjoined and restrained from, in any manner, directly or indirectly:

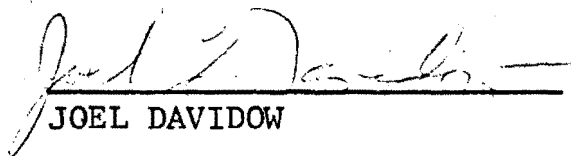
- (a) renewing the aforesaid combination and conspiracy to restrain the interstate commerce as hereinabove described;
- (b) engaging in any other combination or conspiracy having a similar purpose or effect;
- (c) adopting, engaging in, participating in, or following any practice, plan, program, design, or device having the purpose or effect of maintaining or renewing the aforesaid violation or any violations similar thereto;
- (d) entering into any agreement or combination with any other motor carrier which limits the freedom of UPS or that carrier independently to file, amend, withdraw or protest any application, filed subsequent to such an agreement, with any state regulatory commission or with the ICC; and
- (e) entering into any agreement or combination with any other motor carrier which restricts UPS or that carrier from soliciting or rendering service in regard to any customer, commodity, or area which UPS or that carrier is authorized by law to serve.

3. That the plaintiff have such other, further, and different relief as the nature of the case may require and that the court may deem just and proper.

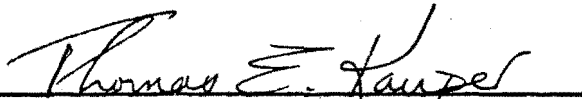
4. That the plaintiff recover the costs of this suit.



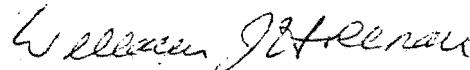
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