

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

UNITED STATES OF AMERICA,	}	
Plaintiff,	}	
v.	}	Civil Action
THE GOODYEAR TIRE & RUBBER	}	No.C-73-835
COMPANY,	}	
Defendant.	}	Filed: August 9, 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 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 these proceedings are 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; and under Section 15 of the Act of Congress of October 15, 1914, as amended (15 U.S.C. §25) commonly known as the Clayton Act, in order to prevent and restrain continuing violations by the defendant, as hereinafter alleged, of Section 2 of the Sherman Act and Section 7 of the Clayton Act.

2. The defendant maintains its principal office, transacts business and is found within the Northern District of Ohio, Eastern Division.

II

DEFENDANT

3. The Goodyear Tire & Rubber Company (hereinafter referred to as "Goodyear") is made a defendant herein. Goodyear is an Ohio corporation with its executive offices in Akron, Ohio. It is the largest rubber fabricator in the world. Goodyear sales exceed \$4 billion and total assets exceed \$3 billion. In 1971 Goodyear ranked 19th in sales among United States industrial corporations. Goodyear facilities for manufacturing tires and tubes are located throughout the country and in foreign countries. Domestic plants engaged in the production of tires and tubes include Akron, Ohio; Jackson, Michigan; Los Angeles, California; Conshohocken, Pennsylvania and Tyler, Texas. Goodyear tires and tubes are distributed through over 1400 company-owned stores as well as through other channels of distribution.

III

DEFINITIONS

4. As used herein, the term "tires" includes (a) tires and tubes, (b) repair materials and accessories used for the repair of tires and tubes, and (c) retreaded tires and tubes.

IV

NATURE OF TRADE AND COMMERCE AND STRUCTURE OF THE TIRE INDUSTRY

5. The defendant, together with Firestone Tire and Rubber Company, the B. F. Goodrich Company, and Uniroyal, Inc., are and have been known as the "Big Four" of the tire industry. The "Big Four" together with The General Tire and Rubber Company, are and have been known as the "majors" of the tire industry. Each of the "majors"

ranks among the top hundred United States industrial corporations in sales.

6. The defendant is the largest manufacturer of tires in the United States. It produces and sells tires on a national basis. Tires produced by the defendant are shipped in interstate commerce.

7. Tire manufacturers sell in two interrelated markets; the original equipment market and the replacement market. The original equipment market accounts for about one-third of total tire shipments and consists of sales of tires to vehicle manufacturers. The original equipment market is estimated to exceed one billion dollars in sales. Goodyear's share of the original equipment market is approximately 30%.

8. The replacement market is roughly twice the size of the original equipment market and consists of sales, both direct and through intermediates, to car, truck and bus owners to replace tires furnished by the vehicle manufacturers. The replacement market is estimated to exceed two billion dollars in sales. Manufacturers which sell in both the original equipment market and the replacement market have an inherent advantage over manufacturers which compete only in the replacement market by reason of the advertisement of the trademark by the vehicle manufacturer and by reason of volume production runs.

9. The business of manufacturing tires is highly and unduly concentrated. The major tire producers, i.e., the defendant and Firestone, Goodrich, Uniroyal and General, account for over 95% of the original equipment market for passenger automobile tires and over 80% of the replacement market for passenger automobile tires. Defendant

Goodyear accounts for over 28% of unit sales in the replacement market, and for an even higher percentage of sales by value and of industry profits.

10. The only significant producer of tires other than the majors is the Armstrong Rubber Company (Armstrong) which produces tires principally for Sears Roebuck & Co., a large retailer of tires.

11. In 1959, there existed a significant group of 12 independent tire producers other than Armstrong and the majors (hereinafter referred to as the "minors") which offered competition to the majors in the replacement tire market. This group included the following firms:

- Dayton Rubber Company (Dayton)
- Seiberling Rubber Company (Seiberling)
- Lee Tire & Rubber Company (Lee)
- Mansfield Tire & Rubber Co. (Mansfield)
- Cooper Tire & Rubber Co.
- Dunlop Tire & Rubber Co.
- Gates Rubber Co.
- McCandless Corp.
- Corduroy Rubber Co.
- McCreary Tire & Rubber Co.
- Schenuit Rubber Co.
- Mohawk Tire & Rubber Co.

12. Replacement tires are marketed through many distribution channels. A substantial amount of tires are produced and sold by the minors to the majors for resale under the trade names of the majors. The wholesale function in the replacement tire market is performed both by the warehouses of the majors and by independent wholesalers. The retail function is provided (a) by independent tire dealers, many of which are franchised by the majors, (b) by tire stores owned

and operated by employees of the majors, (c) by merchandisers, such as automotive chains and stores, department stores, discount stores, and (d) through networks of gasoline service stations marketing TBA (tires, batteries and accessories).

13. The distribution of automobile passenger tires is accomplished under three types of brands. First are tires sold under the house brand of the majors. Such tires command the highest prices and the largest profit and have sold at a recognized premium over other tires. Ranking second in profitability and price are tires of the minors' brands and the secondary brands of the majors. Ranking third in price and profit level are the private brand tires. In 1959, private brand tires were manufactured principally by the minors and Uniroyal and were sold under the brands of their purchasers, such as oil companies and merchandisers.

14. In 1959, a new type of retail distribution facility operating from leased space located in department stores had developed and had begun to offer competitive opportunities to small companies and this posed a competitive threat to the majors. The major distributors occupying this new channel of distribution were Vanderbilt Tire & Rubber Co. (Vanderbilt), Abel Corp. (Abel), and American Auto Stores, Inc. (American).

15. For twenty years or more prior to 1959, the defendant and other majors manufactured most of the tires sold in the United States. There have been no successful new independent entrants since at least 1933.

16. In 1959, the American tire industry was composed of five major companies, Armstrong, nine significant independents, and three extremely small independents. Of the twelve independents, Dayton had 1.7% of the market, Seiberling 1.6%, Lee 2.2%, and Mansfield 5.4%. By 1967, Dayton, Seiberling and Lee had been driven out of business, Dayton and Seiberling having been acquired by Firestone and Lee by Goodyear. Mansfield had been reduced to a 1.7% market share and was selling a third of its production to Firestone for resale. During the same period Goodyear's market share increased from 23% to 28%.

V

OFFENSES ALLEGED

ATTEMPT TO MONOPOLIZE

17. From about 1959 to date, defendant Goodyear has attempted to monopolize the manufacture and sale of replacement tires in violation of Section 2 of the Sherman Act by the following conduct, among other things:

- (a) Substantially lowering the prices of replacement passenger tires in 1959, in a period of rising costs and strong demand, with the intent of gaining market share at the expense of the smaller companies.
- (b) Maintaining low price levels until at least 1966 for the purpose of controlling prices and weakening smaller competitors.
- (c) Arranging with more than ten oil companies for many years until 1966. "TBA" sales commission plans that were economically

coercive on the service station outlets of those oil companies and thus substantially foreclosing smaller tire companies from the significant market which these service stations constituted.

- (d) Engaging from 1959 through at least 1967 in a program of planned "trade relations" or reciprocal dealing in which defendant's vast size and purchasing power was used as a tool for obtaining business at the expense of smaller firms which had less purchasing power or which refrained from reciprocal dealing.
- (e) Acquiring between 1959 and 1967 a large number of important wholesale and retail distributors of tires, including Vanderbilt, the marketing division of Lee, The G. T. Duke Company (Duke), American, Hicks Rubber Company (Hicks) and Star Rubber Company (Star), and thus foreclosing significant outlets to smaller companies.
- (f) Acquiring in 1963 the manufacturing facilities of Lee, which had previously been a significant competitor of Goodyear.
- (g) Raising tire prices significantly from 1966 on, after Lee, Seiberling, Dayton, Vanderbilt and Mansfield had been badly damaged financially and competitively and forced to sell out in whole or in part.

18. The effect of defendant's conduct has been to contribute significantly to the financial demise and sale to a major tire company of important distributors and manufacturers of tires, to thus lessen the number of independent companies manufacturing and marketing tires, to raise barriers to the entry of new competitors into the tire business, and to increase its own leading market share from 23% to 28%.

ILLEGAL ACQUISITIONS

19. By its acquisitions described in paragraph 17, sections (e) and (f) above, Goodyear violated Section 7 of the Clayton Act, in that the effect of these acquisitions may be substantially to lessen competition both individually and cumulatively in the manufacturing and distribution of replacement tires in the United States. These acquisitions are described more particularly below:

- (a) The acquisition of Lee eliminated a substantial competitor which sold tires in competition with Goodyear at both the manufacturing and retail levels. Before the defendant's predatory acts contributed to its loss of market share and financial difficulties, Lee occupied 2.2% of the tire market at the manufacturing level, selling approximately \$35,000,000 of tires annually.

- (b) The acquisition of Vanderbilt, Hicks, Star, American and Duke, (1) eliminated substantial competitors which sold tires in competition with Goodyear at the retail level, and (2) eliminated sources of distribution of tires potentially available to minor tire companies. Vanderbilt's annual sales amounted to about \$40,000,000. It occupied 1% of the retail tire market and approximately 30% of the department store leased department channel of distribution. Cumulatively the annual sales of all of these distributors amounted to about \$60,000,000 and they cumulatively occupied about 3% of the market at retail.

VI

EFFECTS

20. The aforesaid offenses have had, among other things, the following effects:

- (a) Suppressing and eliminating price competition in the sale and distribution of tires in interstate commerce.
- (b) Depriving purchasers of tires of free and open competition in their tire purchases.
- (c) Reducing and eliminating the ability of the minors and potential tire manufacturers, distributors and sellers to compete with said defendant.

- (d) Eliminating the actual and potential tire competition of Dayton Rubber Company, Sciberling Rubber Company and Lee Tire & Rubber Company, and of Vanderbilt and other distributors.
- (e) Further increasing the barriers to entry into the production of tires by the foreclosure of the market represented by the acquired distributors.
- (f) Reducing competition among the majors and the minors, and in the tire industry as a whole; and
- (g) Enabling defendant to abuse and increase its dominant position to the detriment of other members of the industry and the public interest in competition in the manufacture, sale and distribution of tires.

PRAYER

WHEREFORE, PLAINTIFF PRAYS:

1. That the Court adjudge and decree that said defendant has attempted to monopolize interstate trade and commerce in tires in violation of Section 2 of the Sherman Act.

2. That the aforesaid acquisitions by the defendant be adjudged violations of Section 7 of the Clayton Act.

3. That said defendant, its officers, directors, agents and employees, and all persons acting or claiming

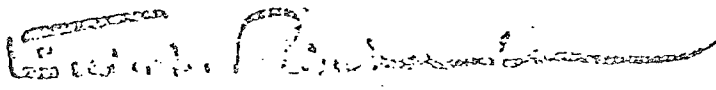
to act on its behalf, be perpetually enjoined and restrained from practices having the purpose or effect of continuing, reviving or renewing any of the aforesaid or similar offenses.

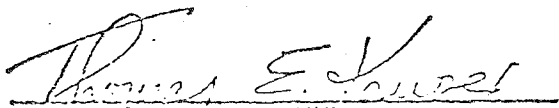
4. That the Court enter such orders as it may deem appropriate and necessary, directing the defendant to divest ownership, control and operation of such tire manufacturing, distributing and retailing assets and facilities as may be necessary to dissipate the effects of the violations herein alleged, to dissipate the power which has resulted therefrom, and to restore the opportunity for free and unfettered competition in the trade and commerce here involved.

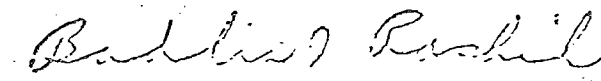
5. That the defendant be required to take such other action as the Court may deem necessary and appropriate to dissipate the effects of the unlawful activities hereinbefore alleged, and to permit and restore competition in the manufacture, sale and distribution of tires.

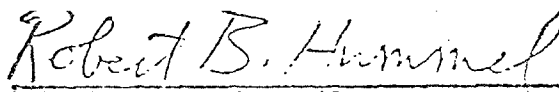
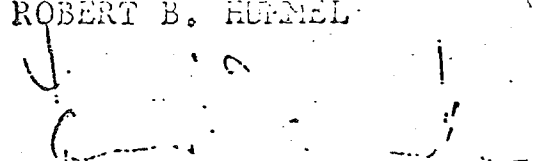
6. That plaintiff have such other, further and different relief as the nature of the case may require and the Court deem just and proper in the premises.

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

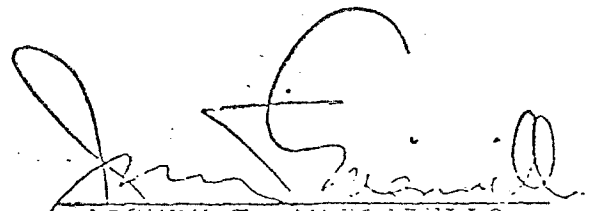

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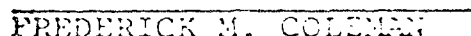

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