

In The

United States District Court

*For The
Northern District of Illinois,
Western Division*

SPRAY-RITE SERVICE CORPORATION, an Iowa corporation,	} Plaintiff,	NO. 72 C 12 JURY DEMANDED
vs.		
MONSANTO COMPANY, a Delaware corporation,	Defendant.	

AMENDED COMPLAINT

Plaintiff, Spray-Rite Service Corporation ("Spray-Rite") by its attorneys, complains of defendant, Monsanto Company ("Monsanto") as follows:

COUNT I

JURISDICTION AND VENUE

1. This action arises under the antitrust laws of the United States, more particularly Section 1 of the Sherman Antitrust Act (15 U.S.C. § 1) and Sections 2, 4 and 16 of the Clayton Antitrust Act as amended by the Robinson-Patman Act (15 U.S.C. §§ 13, 15 and 26). Plaintiff brings this action to recover damages.

2. Monsanto transacts business and is found within the Northern District of Illinois and has during the period of the violations alleged herein transacted business and was found within the Northern District of Illinois. Many of the unlawful acts alleged herein or done pursuant to the combination and conspiracy alleged herein, have been performed

within the Northern District of Illinois, and the commerce described hereinafter is carried on in part within this District.

PARTIES

3. Plaintiff, Spray-Rite, is an Iowa corporation, having its principal place of business in the State of Illinois. Spray-Rite sold agricultural pesticides, primarily in the Corn Belt of the United States until approximately 1972, when, because of the unlawful acts alleged herein, Spray-Rite was forced to terminate its business.

4. Defendant, Monsanto, is a Delaware corporation, having its principal place of business in the State of Missouri. Monsanto manufactures and sells a widely diversified line of chemical products to many different industries throughout the United States and the world. It operates over 60 domestic plants and research facilities, and many foreign facilities. During 1974, Monsanto enjoyed sales of about \$3.50 billion. Monsanto markets its chemical products through product groups, one group of which deals in chemical products for agriculture, including agricultural pesticides. The agricultural chemical products group accounted for 8.4%, 8.9%, 10.0% and 11.7% of all sales by Monsanto and its subsidiaries in calendar years 1968, 1969, 1970 and 1974, respectively. Monsanto is one of the largest manufacturers of pesticides in the United States. Spray-Rite had a contract with Monsanto to distribute certain of Monsanto's pesticides in the Corn Belt until the events of 1968 as hereinafter described.

DEFINITIONS

5. As used in this complaint, "pesticides" means chemicals and chemical compounds used in agriculture to destroy or control one or more types of harmful plants, insects or fungi; "herbicides" means a pesticide used to destroy or control harmful plants; "Corn Belt" means the upper and

central midwestern United States; "contract distributor" means a distributor who has entered into a contract with Monsanto to distribute its pesticides and "co-conspirators" means Monsanto's subsidiaries and agents, all contract distributors of Monsanto pesticides on and after 1968, including but not limited to Associated Producers, Inc., Brayton Chemical Co., Hopkins Agricultural Chemical Co., Lavery Sprayers, Inc., Mid-State Chemical Co., Midwest Agricultural Warehouse Co. and Van Diest Supply Co. and dealers of Monsanto pesticides in the Corn Belt and throughout the United States.

TRADE AND COMMERCE

6. The pesticides which are the subject of this complaint move regularly in interstate commerce. The unlawful acts and practices alleged in this complaint operate directly on such products in connection with their manufacture, sale and interstate shipment and thereby directly restrain and adversely affect interstate commerce.

7. Monsanto conducts its business in interstate commerce and the unlawful acts and practices complained of herein occurred in the flow of such commerce.

8. Spray-Rite has sold pesticides in the Corn Belt since 1956. From its inception, Spray-Rite has been a pioneer and innovator in the application of pesticides as that technology has developed since World War II, and was instrumental in improving the sales distribution of pesticides in the Corn Belt. Spray-Rite continued thereafter to offer superior technical and marketing services to its customers by concentrating on and specializing in the distribution of pesticides. Spray-Rite has sought to sell to customers in large lots, early in the season and on a cash basis whenever possible. Consequently, Spray-Rite has had a negligible bad debt experience. For these reasons and because of its otherwise efficient methods of operation, Spray-Rite had been able to operate successfully by offering competitive prices to its customers.

9. Since about 1957 and continuing until October 28, 1968, Spray-Rite was a contract distributor of Monsanto herbicides. From time to time during that period, Monsanto and Spray-Rite executed agreements entitled Formulated Pesticide Products Distributor Agreements, but Spray-Rite's distributorship and course of dealing with Monsanto was continuous during that period of time regardless of the existence, or lack of existence, of such executed Agreements. While a Monsanto contract distributor, Spray-Rite promptly paid its invoices to Monsanto, participated in Monsanto advertising and promotional programs and otherwise performed satisfactorily as a distributor of Monsanto herbicides in all lawful and material respects. During the years 1966, 1967 and 1968, Spray-Rite purchased approximately \$312,231.00, \$642,498.00 and \$496,875.00, respectively, of Monsanto herbicides from Monsanto. By 1967, Spray-Rite was one of Monsanto's largest volume distributors of Monsanto herbicides in the Corn Belt. Spray-Rite anticipated substantial increases during future years in its purchases of Monsanto herbicides because the demand for such herbicides in the Corn Belt was expanding rapidly and substantially, in part due to the efforts of Spray-Rite. In reliance on continuing and growing as a Monsanto distributor, Spray-Rite invested substantial capital and labor in its business. As a result, Spray-Rite has the modern warehouse capacity to carry substantial pesticide inventories and has vehicles suitable for efficient delivery of such pesticides. Spray-Rite also developed, at great expense, valuable and unique lists of pesticide customers and potential customers for its growing business.

10. An additional factor contributing to Spray-Rite's record of growth was its ability to hold itself out to its customers and potential customers as carrying a "full line" of pesticides for application in the Corn Belt. It has been the practice in the Corn Belt for distributors of pesticides to carry such a "full line" because purchasers of pesticides usually purchase all their requirements from a single source of supply. In 1968 and in other years, it was essential for a

full line pesticide distributor in the Corn Belt to carry the popular patented pesticides manufactured by Monsanto and by Ciba-Geigy Corporation (formerly Geigy Corp.). Such pesticides included Radox, Ramrod and Lasso manufactured by Monsanto, and Atrazine (Aatrax) and Diazinon manufactured by Ciba-Geigy Corporation. Spray-Rite was a distributor of such Monsanto and Ciba-Geigy Corporation pesticides in 1968. A distributor of pesticides in the Corn Belt who did not carry all or substantially all such pesticides (or their currently popular equivalents) was and is at a competitive disadvantage with other distributors who do, because of the aforescribed practice of pesticide purchasers to purchase from a single source of supply.

THE VIOLATIONS

11. Beginning in or about 1967 and continuing to the present time, Monsanto and the co-conspirators have combined, conspired and agreed with one another to eliminate and have eliminated Spray-Rite as a competitor in the sale of Monsanto herbicides and other pesticides in the Corn Belt and to restrain trade in the sale of Monsanto herbicides and other pesticides in the Corn Belt. Such combinations, conspiracies and agreements include the following unlawful acts and practices:

- a. Monsanto and the co-conspirators have determined, fixed and maintained prices at which distributors of Monsanto herbicides may resell such herbicides;
- b. Monsanto and the co-conspirators have restricted the territory in which distributors of Monsanto herbicides may resell such herbicides;
- c. Monsanto and the co-conspirators have restricted the type of customer to whom distributors of Monsanto herbicides may resell such herbicides;
- d. Monsanto, in combination, conspiracy and agreement with its co-conspirators, terminated Spray-Rite

and other contract distributors of Monsanto herbicides to punish and coerce distributors to comply with Monsanto and its co-conspirators' policies and practices of fixing and maintaining prices and restricting territory and types of customers;

e. Monsanto and the co-conspirators have reported among themselves the names of distributors who have failed to comply with the policies and practices of fixing and maintaining prices and restricting territories and types of customers in order to coerce compliance with such policies;

f. Monsanto and the co-conspirators have manipulated the price and terms of sale of Monsanto herbicides and the availability of Monsanto herbicides to Monsanto distributors in order to punish and coerce distributors to comply with the policies and practices of fixing and maintaining prices and restricting territories and types of customers;

g. Monsanto and the co-conspirators boycotted Spray-Rite in order to eliminate Spray-Rite as a competitor and to coerce distributors of Monsanto herbicides to comply with the policies and practices of fixing and maintaining prices and restricting territories and types of customers;

h. Monsanto and the co-conspirators have invoked and enforced a restrictive herbicide shipping program in order to enforce the policies and practices of fixing and maintaining prices and restricting territories and types of customers;

i. Monsanto and the co-conspirators have invoked and enforced a herbicide distributor and dealer compensation program in order to enforce the policies and practices of fixing and maintaining prices and restricting territories and types of customers;

j. Monsanto and the co-conspirators have invoked and enforced a herbicide distributor early take program in order to enforce the policies and practices of fixing and maintaining prices and restricting territories and types of customers;

k. In the mid 1960's through and including 1969, Monsanto established approximately 155 Monsanto Agricultural Centers ("MAC centers") most of which were located in the Corn Belt. The MAC centers were, for the most part, Monsanto-owned sales outlets which offered and sold Monsanto pesticides and other agricultural products to customers and potential customers of Spray-Rite. The MAC centers offered and sold to such customers and potential customers, Monsanto herbicides in combination with other agricultural products at "package" prices and at generally lower prices than distributors of Monsanto herbicides were offering. Monsanto, through its MAC centers, sold Monsanto herbicides to customers and potential customers of Spray-Rite at prices lower than the prices at which Monsanto sold Monsanto herbicides of like grade and quality to Spray-Rite. Monsanto utilized the sales of herbicides through its MAC centers to destroy the business of Spray-Rite.

l. Monsanto has sold and continues to sell herbicides of like grade and quality at discriminatory prices and in connection with discriminations in services and facilities, by means of devices, acts and practices such as indirect price and service concessions, commissions, rebates and advertising and other allowances.

EFFECTS OF VIOLATIONS

12. The aforesaid unlawful acts and practices have caused, among other things, the following unlawful effects:

a. The resale prices of Monsanto herbicides have been fixed and maintained at arbitrary and non-competitive levels;

b. The territory in which distributors of Monsanto herbicides may resell Monsanto herbicides has been restricted;

c. The type of customer to whom distributors of Monsanto herbicides may resell Monsanto herbicides has been restricted;

d. The number of distributors of Monsanto herbicides and other pesticides has been reduced with the result that competition in the sale of Monsanto herbicides and other pesticides in the Corn Belt has been restricted;

e. The price at which Spray-Rite could purchase Monsanto herbicides, after being terminated by Monsanto as a contract distributor, has been fixed and maintained at arbitrary and non-competitive levels;

f. The supply of Monsanto herbicides available to Spray-Rite has been restricted;

g. Distributors of Monsanto herbicides and other pesticides in the Corn Belt have been coerced into complying with the policies of Monsanto and its co-conspirators of fixing and maintaining prices, restricting territories and types of customers through policing, boycotting, terminating non-complying contract distributors, selectively compensating distributors, selectively shipping herbicides and manipulating the terms of sale and the supply of Monsanto herbicides;

h. Purchasers of Monsanto herbicides and other pesticides have been substantially hindered from choosing other distributors and from purchasing at competitive prices.

i. Spray-Rite has been eliminated as a competitor in the sale of Monsanto herbicides and other pesticides. It has experienced net operating losses of \$37,067.00, \$11,513.00, \$61,763.00 and \$65,469.00, respectively, in 1969, 1970, 1971 and 1972, its volume of business and its

potential for acquiring new business was damaged and ultimately its business was destroyed.

13. As a direct and proximate result of the unlawful combinations, conspiracies, agreements, acts and practices alleged against Monsanto and the co-conspirators herein, Spray-Rite has been irreparably injured in its business and property and its business and property have been destroyed. Spray-Rite is entitled to have judgment against Monsanto in treble the amount of its damages which are at least \$1,825,000.00.

14. The foregoing combinations, conspiracies and agreements and the acts and practices pursuant thereto of Monsanto and the co-conspirators were and are in restraint of trade or commerce among the several states in violation of Section 1 of the Sherman Act (15 U.S.C. § 1).

COUNT II

1-14 Paragraphs 1-14 of Count 1 are realleged as paragraphs 1-14 of Count II.

15. The foregoing acts and practices of Monsanto alleged in subparagraphs 11(k) and 11(l) are in violation of Section 2(a), (c), (d) and (e) of the Robinson-Patman Act (15 U.S.C. § 13(a), (c), (d) and (e)).

RELIEF REQUESTED

WHEREFORE, plaintiff, Spray-Rite prays:

1. That this Court adjudge and decree that the combinations, conspiracies, agreements, acts and practices charged against Monsanto herein were and are in violation of Section 1 of the Sherman Antitrust Act (15 U.S.C. § 1) and Section 2(a), (c), (d) and (e) of the Clayton Act (15 U.S.C. § 13(a), (c), (d) and (e)).

2. That this Court enter judgment in favor of Spray-Rite against Monsanto in the amount of at least \$5,475,000.00.

3. That Spray-Rite recover from Monsanto its costs in this suit including its reasonable attorneys' fees incurred herein, as provided by Section 4 of the Clayton Act (15 U.S.C. § 15).

4. That Spray-Rite have such other additional and different relief as the nature of the case may require or as the Court shall deem just.

PLAINTIFF DEMANDS A TRIAL BY JURY.

/s/ RICHARD F. VITKUS

Richard F. Vitkus

One First National Plaza
Suite 5000
Chicago, Illinois 60603
(312) 786-5600

Attorney for Plaintiff

OF COUNSEL:
WINSTON & STRAWN
One First National Plaza
Suite 5000
Chicago, Illinois 60603
(312) 786-5600

[Certificate of service omitted in printing.]