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IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,	:	FILED DEC 13 1947
	:	
Plaintiff,	:	
	:	
v.	:	CIVIL NO. ¹²¹⁶ 5047-47
	:	
E. I. DU PONT DE NEMOURS	:	
AND COMPANY, INC.,	:	
	:	
Defendant.	:	

C O M P L A I N T

To The Honorable The Judges Of The District Court Of The United States
For The District Of Columbia:

The United States of America, as plaintiff, by its attorneys,
acting under the direction of the Attorney General of the United
States, brings this action against the defendant and complains and
alleges as follows:

I

JURISDICTION AND VENUE

1. This complaint is filed and this action is instituted against
the defendant under Section 4 of the Act of Congress of July 2, 1890,
c. 647, 26 Stat. 209, as amended, entitled "An Act to protect trade and
commerce against unlawful restraints and monopolies," commonly known as
the Sherman Act, in order to prevent and restrain continuing violations
by the defendant, as hereinafter alleged, of Section 2 of the Sherman
Act.

2. The corporate defendant, E. I. du Pont de Nemours and Company,
Inc., has an office, transacts business, and is found within the District
of Columbia.

II

THE DEFENDANT

3. E. I. du Pont de Nemours and Company, Inc. (hereinafter referred to as "du Pont"), a corporation organized and existing under the laws of the State of Delaware, with offices and principal place of business at Wilmington, Delaware, is made a defendant herein. du Pont is successor to Du Pont Cellophane Company, Inc. (sometimes hereinafter referred to as "DCCI"), the latter having been dissolved in or about 1936, at which time its assets were transferred to and its contractual rights and obligations assumed by du Pont. At all times, DCCI was operated as a wholly owned subsidiary of du Pont Securities Corporation, in turn, a wholly owned subsidiary of du Pont. DCCI was the successor to an earlier Du Pont Cellophane Company, Inc. (sometimes hereinafter referred to as "DCC") through reincorporation of the latter under the laws of the State of Delaware in or about 1929. DCC was incorporated under the laws of the State of Delaware in or about 1923, and, at all times up until the aforesaid reincorporation in 1929, du Pont owned in excess of fifty (50) per centum of its voting stock. During their corporate existences DCC and DCCI, respectively, entered into numerous contracts, agreements, arrangements and understandings, and did acts and things constituting part of the monopolization, attempt to monopolize, and combination and conspiracy to monopolize hereinafter alleged, and, at all times during said period, du Pont controlled the policies, operations and management of its subsidiaries described above. As hereinafter used the term "du Pont" includes DCC and DCCI as well as E. I. du Pont de Nemours and Company, Inc.

III

CO-CONSPIRATORS

4. LaCellophane, Societe Anonyme (hereinafter referred to as "La Cellophane"), a corporation organized and existing under the laws

of France, with offices and principal place of business at Paris, France, is not made a defendant herein but is named as a co-conspirator to the combination and conspiracy alleged in this complaint. La Cellophane is the largest manufacturer of cellophane in France and is associated with the Comptoir des Textiles Artificiels (hereinafter referred to as "the Comptoir"), a French holding company controlling a number of manufacturers of cellulose products in Europe.

5. British Cellophane Limited (hereinafter referred to as "BCL"), a corporation organized and existing under the laws of the United Kingdom, with offices and principal place of business at London, England, is not made a defendant herein but is named as a co-conspirator to the combination and conspiracy alleged in this complaint. BCL is the largest producer of cellophane in England and, throughout the period of time covered by the combination and conspiracy hereinafter alleged, has been a jointly owned subsidiary of La Cellophane and Courtaulds Limited, the largest rayon manufacturer in England.

6. Canadian Industries Limited (hereinafter referred to as "CIL"), a corporation organized and existing under the laws of the Dominion of Canada, with offices and principal place of business at Montreal, Canada, is not made a defendant herein but is named as a co-conspirator to the combination and conspiracy alleged in this complaint. CIL is the largest manufacturer of cellophane in Canada. Throughout the period of time covered by the combination and conspiracy herein alleged, du Pont and Imperial Chemical Industries, Ltd. have owned in equal shares from eighty-five (85) to ninety-five (95) per centum of the capital stock of CIL, and have controlled the management and policies of CIL.

7. Kalle & Co., A.G. (hereinafter referred to as "Kalle"), a corporation organized and existing under the laws of Germany, with

offices and principal place of business at Wiesbaden-Biebrich, Germany, is not made a defendant herein but is named as a co-conspirator to the combination and conspiracy alleged in this complaint. At the advent of World War II, Kalle, a subsidiary of I. G. Farben Industries, A.G., was the largest producer of cellophane and cellulose caps and bands in Germany.

8. Societe de La-Viscose Francaise, Societe Anonyme (hereinafter referred to as "Viscose Francaise"), a corporation organized and existing under the laws of France, with offices and principal place of business at Paris, France, is not made a defendant herein but is named as a co-conspirator to the combination and conspiracy alleged in this complaint. Viscose Francaise is the largest manufacturer of cellulose caps and bands in France and is associated with the Comptoir. Viscose Francaise is successor in interest to the business of Societe Francaise des Crins Artificiels, which prior to its merger entered into contracts, arrangements and understandings with du Pont as part of the combination and conspiracy hereinafter alleged. Whenever the term Viscose Francaise is herein used, such term shall mean either Viscose Francaise or its predecessor Societe Francaise des Crins Artificiels.

9. Viscose Development Company Limited (hereinafter referred to as "VDC"), a corporation organized and existing under the laws of the United Kingdom, with offices and principal place of business at Bromley, Kent, England, is not made a defendant herein but is named as a co-conspirator to the combination and conspiracy alleged in this complaint. VDC is the largest manufacturer of cellulose caps and bands in England.

IV

THE PRODUCTS INVOLVED

10. Cellophane is essentially regenerated cellulose, recovered from solutions of native cellulose, an abundant raw material derived

in the instant process from sulphite wood pulp. Viscose, the intermediate solution product, is also employed in the manufacture of caps and bands, sausage casings, cellulose sponges and rayon.

11. Cellophane is basically a thin, transparent sheet, primarily used for wrapping cigarettes, foodstuffs, and other consumer goods. It is also employed in the manufacture of decorative ornaments and has numerous military purposes. Cellulose caps and bands (hereinafter referred to by the term "caps and bands") are used principally as secondary bottle closures, particularly by the distillers industry. The characteristics of cellophane render it unique for its particular purposes.

12. Cellophane is manufactured by extruding viscose through a long, narrow slot into a chemical bath where it coagulates in the form of a thin sheet on a metal roller or plate. This sheet is then run through a succession of purifying baths, and, while still wet, is immersed in glycerine, some of which is absorbed. Excess moisture is then pressed out by rollers and the material is dried. The basic commercial product, a thin, transparent, flexible, non-fibrous sheet, is called plain transparent cellophane.

13. Sheets of plain cellophane may be processed with a moisture resistant film, usually comprising waxes, resins, nitro cellulose or other film-forming materials and plasticizers. Moistureproof cellophane is designed for wrapping articles which must be protected against gain or loss in moisture content. Demand for moistureproof cellophane exceeds that for the uncoated film, which it outsells at an approximate ratio of three to one. For purposes of this complaint, the term "cellophane" will be used to designate regenerated cellulose sheeting irrespective of type.

14. Caps and bands are films of regenerated cellulose, made by processes and from materials similar to those utilized in the manu-

facture of cellophane, extruded in such a manner as to form tubular skins which, when placed over the openings of containers or tubing in the wet state, shrink upon drying to form either a primary or secondary closure.

15. The product, cellophane, and processes for its production were divulged prior to 1905. However, it was the work of J. E. Brandenberger, in France, commencing in or about 1908, which resulted in the design and construction of machines to manufacture cellophane in the endless sheet form of the modern product. The Comptoir acquired the Brandenberger processes and patents and subsequently organized La Cellophane to manufacture cellophane thereunder.

V

TRADE AND COMMERCE

16. For several years prior to 1923, La Cellophane supplied all the requirements of American purchasers of cellophane by exports from France. In that year, pursuant to an agreement by and between du Pont and Arena Trading Corporation, a Delaware corporation acting on behalf of and as the authorized agent of La Cellophane, du Pont acquired the cellophane markets for the United States. In or about 1924, DCC began manufacturing in its first plant at Buffalo, New York. Until its production was sufficient to satisfy demand, du Pont sold cellophane shipped from France, thereby supplanting La Cellophane's exclusive agents for the United States. In or about 1928, du Pont acquired its caps and bands business by virtue of the purchase of Capes-Viscose, Inc., an American subsidiary of the Comptoir. Moistureproof cellophane was put into production in 1927 and rapidly assumed a position as the most important single product in the industry.

17. du Pont presently owns and operates six plants engaged in the manufacture of cellophane, and has sales offices at Chicago, Illinois; New York, New York; Philadelphia, Pennsylvania; San Francisco, California

and Boston, Massachusetts. The location of du Pont's manufacturing plants, the date when production was started in each, and the expansion which had occurred by 1944 are set forth in the table below:

DU PONT CELLOPHANE PLANTS

<u>Plant and Location</u>	<u>Operation Started</u>	<u>Rated Annual Producing Capacity</u>	
		<u>Initial (pounds)</u>	<u>1944 (pounds)</u> ^{1/}
Buffalo #1 (N.Y.)	April, 1924	1,300,000	12,000,000 ^{1/}
Old Hickory #1 (Tenn.)	October, 1929	6,000,000	15,000,000
Old Hickory #2 (Tenn.)	August, 1930	6,600,000	15,000,000
Spruance #1 (Richmond, Va.)	November, 1930	6,600,000	15,000,000
Buffalo #2 (N.Y.)	February, 1932	8,700,000	16,000,000
Spruance #2 (Richmond, Va.)	May, 1937	12,200,000	19,000,000
Clinton (Iowa)	March, 1941	14,000,000	18,000,000

^{1/} Rated capacity at Buffalo #1 when manufacture there was discontinued in 1942, for purposes of conversion to the production of rayon tire yarn.

18. Sylvania Industrial Corporation (hereinafter referred to as "Sylvania"), formerly a corporation organized and existing under the laws of the State of Virginia, has been the only other domestic manufacturer of cellophane. This company commenced production in or about June, 1930 and since that time has owned and operated a single plant at Fredericksburg, Virginia. During 1946, Sylvania was acquired by American Viscose Company, a corporation organized and existing under the laws of the State of Delaware and the largest producer of viscose rayon in the United States. Whenever the term "Sylvania" is hereinafter used with reference to events transpiring subsequent to the date of said acquisition it shall mean the Sylvania Division of the American Viscose Company.

19. In addition to du Pont and Sylvania, a small independent manufacturer, Celon Company, (hereinafter referred to as "Celon") produces caps and bands at Madison, Wisconsin.

20. Cellophane and caps and bands have been and continue to be distributed principally by direct sales from the manufacturers to foodstuff packagers, tobacconists, textile merchants and other dealers in consumer goods. Indirect sales, which account for between thirty (30) and forty (40) per centum of gross sales, are made to small purchasers through jobbers, agents, fabricators and converters. During 1946 du Pont's sales of cellophane and caps and bands amounted to \$46,224,349. du Pont sells and ships cellophane and caps and bands in interstate trade and commerce to users, distributors, and fabricators located in states other than the states in which the said commodities are produced.

VI

OFFENSES CHARGED

21. Beginning in or about the year 1923 and continuing thereafter up to and including the date of the filing of this complaint, the defendant has monopolized, has attempted to monopolize, and has combined and conspired to monopolize trade and commerce among the several states of the United States in cellophane and in caps and bands, all in violation of Section 2 of the Act of Congress of July 21, 1890, c. 647, 26 Stat. 209, as amended, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," commonly known as the Sherman Act. Defendant is continuing and threatens to and will continue said offenses, unless the relief hereinafter prayed for in this complaint is granted.

22. The defendant has wilfully and intentionally acquired and maintained a monopoly, presently existing, of the manufacture and sale of cellophane and caps and bands. As a result, the defendant now has, and has had for many years past, virtually absolute control of the markets in the United States for cellophane and caps and bands, and now possesses monopoly powers over said industry which, among others, include:

- (a) The power to fix and maintain arbitrary and non-competitive prices and terms of sale for said products in the United States;
- (b) The power to control the supply of said products available to domestic buyers;
- (c) The power to exclude others who, but for du Pont's predominant position and power in the industry, would engage in the manufacture and sale of said products in the United States;
- (d) The power to subvert the use of and to engross United States letters patent, trade marks, trade secrets and "know how";
- (e) The power to restrain free and open competition at the distribution level of the industry by imposing unlawful terms and conditions upon domestic buyers of said products, who, lacking adequate, alternative sources of supply, were constrained to comply therewith.

The aforesaid market control and the monopoly powers appurtenant thereto, which have become self sustaining and self perpetuating, are more fully set forth and described hereinbelow.

23. In the assertion of its aforesaid monopoly power and to maintain, support and increase said power, the defendant has, throughout the period of time hereinabove alleged, arbitrarily determined prices and controlled supplies, has excluded potential competitors, has in its operations subverted the patent laws, has controlled the channels of distribution, and has performed other acts and practices, as are more fully hereinafter set forth and described.

A.

24. At all times during the period of time covering the violations of law herein alleged, the defendant has, within the United States, controlled the supplies of cellophane and caps and bands available to domestic purchasers. Excepting a single manufacturer possessing relatively small plant capacity in cellophane and caps and bands and one small producer of caps and bands only, du Pont manufactures the entire output of these products available for consumption within the United States. Aggregate production of cellophane by du Pont, from the commencement of domestic manufacture to the present time, averages in excess of seventy-eight (78) per centum of the total supply. Throughout the same period, du Pont has owned and operated more than seventy (70) per centum of facilities existing within the United States devoted to the manufacture of cellophane. With the intent and effect of forestalling access to the industry by potential competitors, the defendant has constantly expanded such facilities in an effort to satisfy increasing demand, and, for the purpose of maintaining and improving its dominant position and power, has, within the three years immediately preceding filing of this complaint, appropriated large sums to expansion of its productive facilities for cellophane.

25. Prior to 1930, the defendant distributed and sold all cellophane manufactured within the United States. Commencing in the year 1934 and continuing on through 1946, du Pont has maintained gross annual sales ranging from seventy-four (74) to eighty (80) per centum of all cellophane sold by domestic producers. During the four calendar years immediately preceding filing of this complaint, du Pont has sold in excess of seventy-five (75) per centum of all cellophane available to domestic purchasers.

26. Production and sales of caps and bands throughout the period of domestic manufacture show consistently large increases; during 1946 the defendant sold approximately 1,490,000,000 units. Commencing in 1930 and continuing on through 1946, du Pont has produced and sold more than seventy (70) per centum of aggregate domestic consumption; during the four calendar years immediately preceding filing of this complaint its production and sales did not fall below that percentage. The balance of this business has been handled principally by Celon, with a small share going to Sylvania. Plans are currently being carried out which will provide du Pont with a greatly increased productive capacity.

27. Since 1930 there has been virtually no imports of cellophane and caps and bands into the United States and such as have existed have been insufficient to influence the supply available to domestic markets. This lack of imports is a direct result of the combination and conspiracy, monopolization, and attempt to monopolize herein alleged and constitutes an important factor in the maintenance of du Pont's monopoly, as is hereinafter more fully described.

28. Throughout the period of domestic manufacture of cellophane and caps and bands within the United States, du Pont has pursued a

policy designed to bring about control, and having the effect of reducing to its control, the entire technology relating to the production of said products. The defendant has, by various means including pooling, cross licensing, and outright purchases, acquired control of virtually all patents and "know how," and rights thereunder or appurtenant thereto, relating to cellophane and caps and bands, and has restricted and prevented others from gaining access to said patents and "know how."

29. Price competition has been and is non-existent in this industry. Prices charged by Sylvania, the sole alternative source of cellophane, have followed rigidly the line of prices established by du Pont. Prices for cellophane and caps and bands are, and have been for many years, controlled and fixed by the defendant, arbitrarily, to yield predetermined profits, without regard for costs of production or other factors determinative in a competitive industry.

30. The defendant possesses the power to regulate the distribution of cellophane and caps and bands. This power arises from its predominance in the industry as producer and the resultant non-existence of adequate, alternative sources of supply. Purchasers of these products have been dependent upon the defendant for their supplies and subjected to unlawful terms and conditions of sale imposed by du Pont. du Pont has implemented its power over distribution and aggravated the effects thereof by various acts and practices hereinafter set forth and described.

31. The defendant's power and control over the cellophane industry is buttressed by its extensive horizontal integration in the chemical industry and its dominant financial position. It is the largest corporation in the United States engaged primarily in

the chemical industry, and the second largest producer in the closely related viscose rayon yarn industry: The broad diversification of its products and markets has developed exceptional domestic and international affiliations, unattainable to Sylvania and Celon. Because any persons desiring to engage in the manufacture of cellophane or caps and bands would be placed at the mercy of a single, powerful corporation possessing the extensive control of technology and supply with the appurtenant powers herein alleged, and because of the great hazard necessarily involved in venturing into a business so completely dominated and monopolized by du Pont, such domination and monopolistic control has had and will continue to have the direct and immediate effect of suppressing and preventing the substantial competition which would otherwise arise in the production and sale in interstate commerce of such products.

B.

32. At all times during the period of time covering the violations of law herein alleged, the defendant has conducted its affairs pursuant to a policy designed to exclude domestic and foreign interests from the manufacture of cellophane and caps and bands within the United States, to bar free access to the domestic markets for said products, and to suppress the existing competition. The objectives of said policy have been accomplished by means of understandings, agreements, practices, and other acts and things, hereinafter more fully described.

33. Patents relating to cellophane and caps and bands have been utilized by the defendant to exclude or suppress competition by means of unlawful devices, tactics, and practices, including, among others, the following: (a) monopolization of United States letters patent and rights thereunder relating to cellophane and caps and bands with the intent and effect, not of operating under

many of the patents and rights so acquired; but to strengthen the defendant's technological control of the industry and to exclude others from the basic technology of the industry by the threat of a mass of patents; (b) acquisition of patents relating to cellophane and caps and bands, deemed by the defendant to be invalid or of doubtful validity, and the employment of several such patents to restrictively license others; from whom were exacted acknowledgments of the validity of said patents; (c) execution of exclusive cross licenses with other owners of patents, or rights thereunder, relating to cellophane or caps and bands, with the intent and effect of suppressing competition between the parties thereto and precluding others from engaging in the manufacture, use or sale of such products; (d) imposition of restrictive conditions, designed to prevent free and open competition in the industry, in licenses of patents relating to cellophane or caps and bands, whereby du Pont's licensees were restrained by the means, among others, of tying clauses, and limitations on units of production or types of use; (e) settlement of patent disputes whereby du Pont and others, by agreement, have defined and allotted to du Pont, as an exclusive field of operation, the cellophane and caps and bands industry, and similarly have defined and allotted to said others certain related fields of business activity; (f) coercive use of patent and trade mark rights of doubtful validity relating to cellophane and caps and bands, including threats to institute infringement suits, with the intent and effect of maintaining du Pont's monopolization of the industry.

34. On or about April 26, 1933, du Pont entered into an understanding with Sylvania, in lieu of prosecuting a patent infringement suit against the latter, which accomplished, under color of various patent, cross licensing arrangements, the establishment of an exclusive patent pool, dominating the manufacture and sale of moistureproof cello-

phane. The purpose of said understanding and the acts done by the defendant in furtherance thereof were: (a) restriction upon the amount of moistureproof cellophane distributed and sold by Sylvania; (b) imposition of restrictions upon the distribution, use and sale of moistureproof cellophane by others; (c) preclusion of competition from others in the manufacture and sale of moistureproof cellophane. In effectuation of said understanding du Pont has executed certain contracts and done other acts and things with the intent and effect of suppressing competition from Sylvania and excluding all others from the industry.

35. In the exercise of its aforesaid power to fix and determine prices for cellophane and caps and bands, du Pont, early, adopted and has successfully carried out an aggressive price policy designed to discourage entry into the industry by potential competitors and to suppress existing competition. At various times, the objectives of said policy were achieved by initiating substantial price reductions on cellophane for the express purpose of forestalling threatened competition. On other occasions, the defendant has warned others, who sought to engage in the manufacture or sale of cellophane, of imminent reductions in the price of its cellophane, or, pending expansion of its production capacity, has announced such reductions several months in advance of their effective dates, for the purpose of inhibiting potential competitors. From time to time, du Pont has had understandings with Sylvania and Celon regarding prices and discounts on cellophane and caps and bands, respectively. The aforesaid price policy and practices pursuant thereto have been directed primarily against domestic manufacturers of viscose rayon yarn and products similar to cellophane, former importers of cellophane, and foreign producers professing an interest in domestic production. The defendant, at all times, presented its control of cellophane and

caps and bands prices as an effective weapon to be used against all threats to its market control.

36. The defendant has pursued various devices and entered into understandings and agreements designed to anticipate and prevent the development of new competition and to suppress existing competitors, all with the purpose and effect of excluding business interests in the United States from engaging in the manufacture and sale of cellophane and caps and bands. In effectuation of that objective, du Pont has: (a) by agreements defined and allotted to itself, as an exclusive field of operation, the manufacture and sale of cellophane and caps and bands, and similarly has defined and allotted to others certain related fields of business activity; (b) has interjected into contracts, covenants by others not to engage in the manufacture of cellophane; (c) induced others to breach contracts with certain competitors; (d) allowed unreasonable quantity discounts to large scale buyers of cellophane and caps and bands, with the effect of channeling the entire requirements of said buyers to du Pont and away from other potential suppliers; (e) executed exclusive dealer agreements with the largest cellophane converters; and (f) exerted the prestige and power of du Pont's position in the chemical industry to dissuade others from engaging in the manufacture and sale of cellophane. The defendant has at all times maintained surveillance of the industry to obtain information concerning the policies and practices of its competitors and to discover incipient competition; and has expanded its facilities from time to time for the purpose of anticipating and discouraging new competition.

37. du Pont has adopted and employed numerous unfair sales practices, some of which are in themselves unlawful, including, among others, the following: (a) selecting and controlling the

number and type of buyers to engage in conversion or distribution of cellophane and caps and bands; (b) utilizing its position in the industry by arbitrarily and unreasonably refusing to sell to certain users of said products; (c) refusing certain purchasers of du Pont cellophane the use of its trademark and other privileges relating to the resale of that product; (d) fixing an arbitrary and discriminatory, discount schedule for sales of cellophane and caps and bands to users, converters, and distributors, in such manner that price differentials on orders of varying quantities were not justified by actual savings in costs to the defendant; (e) establishing arbitrary classifications of buyers of cellophane, whereby discriminatory discounts and terms of sale were effectuated; (f) restraining and preventing price competition in the distribution of cellophane and caps and bands by fixing and maintaining prices at which purchasers from du Pont were to resell such products; and (g) defining geographical areas and restraining the activities of certain of its purchasers to resales only within said areas.

38. The defendant has prevented establishment within the United States of manufacturing facilities for cellophane and caps and bands by foreign interests. European producers of materials of regenerated cellulose, by reason of their technical knowledge and experience, constitute potential competition to du Pont's domination of domestic production. Potential competitors of this nature have been excluded from engaging, either directly or through association with domestic manufacturers, in the manufacture of cellophane or caps and bands in this country. Principally, du Pont has accomplished exclusion of these competitive factors in concord with the co-conspirators, named herein, by means of understandings and agreements, acts and things, hereinafter more fully set forth. Said concordance, in addition to inhibiting the investment of foreign capital in plants located within the United States, has discouraged expansion by domestic manufacturers into production of cellophane and caps and bands.

C.

39. du Pont has entered into unlawful understandings, having as their objective and result a world-wide cartel, with the principal foreign manufacturers of cellophane and caps and bands, who are named as co-conspirators herein, for the allocation of territories and the exchange of patent rights and technical knowledge. The purpose and effect of these understandings have been: (1) to eliminate and exclude the co-conspirators and their licensees from manufacturing, marketing and selling cellophane and caps and bands within the United States in competition with the defendant; and (2) to obtain for the defendant exclusive rights in the United States to all patents, inventions and technical knowledge developed by the co-conspirators and their licensees, which relate to cellophane and caps and bands, and to deny to potential American competitors access to said patents, inventions and technical knowledge. Said understandings between the defendant and co-conspirators have been carried out and effectuated, in large part, by various written contracts.

40. By the terms of the aforesaid written contracts, or agreements and addenda supplemental thereto, it was provided among other things: (a) that the United States, its territories and possessions, and certain other countries in North and Central America be allocated to the defendant, and the rest of the world, excluding South America and Japan which were shared by du Pont and the French interests, be allocated among the various co-conspirators; (b) that the co-conspirators refrain from manufacturing, marketing and selling cellophane or caps and bands in the geographical areas allocated to du Pont; (c) that the defendant refrain from manufacturing, marketing, or selling said products in the geographical areas allocated to the co-conspirators; (d) that the defendant and co-conspirators grant each other exclusive rights to make, use, and sell cellophane and caps or bands in the geographical areas

respectively allocated to each, but not beyond the boundaries thereof, under all their respective existing and future patent rights;

(e) that the defendant and co-conspirators exchange complete technical knowledge with respect to cellophane and caps and bands; and

(f) that the defendant and co-conspirators require their licensees to assume, observe and perform their respective obligations under these contracts.

41. At various times during the period of time covering the violations of law herein alleged, du Pont entered into written contracts of the nature described in the preceding paragraph with co-conspirators La Cellophane, BCL, CIL, Kalle, Viscose Francaise, and VDC. The defendant conducted its business in accordance with the understandings alleged in paragraph 39 and with strict observance of the terms of the aforesaid contracts until on or about October 17, 1940, at which time du Pont nominally disavowed the allocation of markets incorporated in said terms, but, in fact, du Pont continued, thereafter, to operate and is now operating in conformance with the illegal division of territories. On or about March 26, 1941, the defendant gave notice that, because of conditions growing out of the then current hostilities in Europe, it regarded its agreements with La Cellophane, Viscose Francaise, and Kalle as terminated.

42. In addition to the understanding and contractual arrangements between du Pont and CIL, alleged hereinabove, the defendant, by virtue of its stock interests in CIL, has exercised and is now exercising control over the manufacturing and sales policies and practices of CIL. In the exercise of such control du Pont has prevented CIL from importing cellophane into the United States for sale in competition with du Pont, and has excluded itself from exporting cellophane to Canada to be sold in competition with CIL.

43. The defendant has eliminated and prevented competition from foreign manufacturers of cellophane and caps and bands, other than the co-conspirators, by diverse means and methods. At various times, it has carried out a policy of making substantial price reductions on cellophane, has materially expanded its productive facilities therefore, and has asserted a strong patent position with respect thereto, all with the intent and effect of eliminating and preventing importations into the United States by foreign producers, other than the co-conspirators. du Pont has advised La Cellophane of its aforesaid policies with the intent and purpose that La Cellophane would inform European cellophane producers other than the co-conspirators, and La Cellophane has informed such producers of said policies. La Cellophane has performed other acts and things on behalf of du Pont, with the latter's knowledge and consent, for the purpose of restraining and preventing such producers from exporting cellophane to the United States. To support and maintain its monopoly, du Pont has sought the establishment and maintenance of high import duties on cellophane with the intent and effect of thus eliminating and preventing the importation of cellophane into the United States.

VII

EFFECTS OF THE VIOLATIONS OF LAW

44. The monopolization, attempt to monopolize, and combination and conspiracy to monopolize, hereinabove alleged, and the various acts, acquisitions, contracts, agreements, and understandings, which formed a part of and were used in effectuation thereof, have culminated in achievement and maintenance by the defendant of a presently existing monopoly in the manufacture and sale of cellophane and caps and bands. In the course of establishing and protecting this monopoly others have been excluded from free access to American markets for said products; imports

have been virtually eliminated and, reciprocally, exports have been drastically curtailed; new capital investment, both foreign and domestic, has been discouraged; and American buyers of said products have been deprived of recourse to adequate, alternative sources of supply. Market domination, in terms of control of supply and prices for cellophane and caps and bands, has induced competitors to subscribe to price leadership; buyers of said products are subjected to arbitrarily fixed and discriminatory prices; and the American public is deprived of the benefits inherent in a system of free enterprise.

VIII

PRAYER

WHEREFORE, the plaintiff prays:

(1) That the aforesaid monopolization, attempt to monopolize, and combination and conspiracy to monopolize be adjudged and decreed to be unlawful, and that the contracts, agreements, understandings, acquisitions, acts, and practices alleged in this complaint be adjudged and decreed to be in violation of the Sherman Act.

(2) That the Court adjudge and decree that the defendant has monopolized, has attempted to monopolize, and has combined and conspired to monopolize the trade and commerce among the several states of the United States in cellophane and caps and bands, in violation of Section 2 of the Sherman Act.

(3) That the defendant and its officers, directors, agents, representatives, successors, assignees, and all persons and corporations acting or claiming to act on behalf of them be perpetually enjoined from monopolizing, attempting to monopolize, or combining and conspiring to monopolize trade and commerce among the several states of the United States with respect to cellophane and caps and bands, and that they be perpetually enjoined from engaging in or participating in practices, contracts, relationships or understandings, or claiming

any rights thereunder, having the purpose or effect of continuing, reviving or renewing any of the aforesaid violations of the Sherman Act.

(4) That du Pont be required to take such action with regard to its properties and assets used in the manufacture and distribution of cellophane and caps and bands as may be necessary to terminate and dissipate the effects resulting from said monopolies and monopolization. And more particularly, that du Pont be required to divest itself of such plants and factories under such terms and conditions as may be necessary and appropriate to establish a competitive industry in cellophane and caps and bands.

(5) That the Court appoint such receivers and trustees as may be necessary or appropriate to meet the requirements of the preceding paragraph of this Prayer; that the Court order the said receivers and trustees to file in this Court for the Court's approval, within ninety (90) days after this cause shall be finally adjudicated and a decree entered, a plan or plans for the disposition of the above described properties, with notice to the Government and an opportunity to be heard thereon; that sales of said plants, properties and assets be made to a concern or concerns, having no relationship to the defendant, direct or indirect, and that such sales be made to separate concerns or interests having no relationship whatsoever with any existing cellophane or caps and bands manufacturer.

(6) That the plaintiff have such other, further and different 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 suit.

TOM C. CLARK
Attorney General

ROBERT A. NITSCHKE
Special Assistant to the
Attorney General

JOHN F. SONNETT
Assistant Attorney General

JAMES L. MINICUS
Special Attorney

GEORGE MORRIS FAY
United States Attorney

GEORGE W. WISE
Special Attorney