

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,
Plaintiff,
v.
PARKE, DAVIS AND COMPANY, ET AL.
Defendant.

CIVIL ACTION NO. 1064-57
Filed May 2, 1957

C O M P L A I N T

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

FIRST CAUSE OF ACTION

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, 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 (15 U.S.C., Sec. 4), in order to prevent and restrain the continuing violations by the defendant, as hereinafter alleged, of Sections 1 and 3 of the Sherman Act.

2. The defendant transacts business and is found within the District of Columbia.

II

THE DEFENDANT

3. Parke, Davis and Company (hereinafter referred to as Parke, Davis) is hereby made a defendant. It is a corporation organized and existing under the laws of the State of Michigan with its principal place of business at Detroit, Michigan.

4. The acts alleged in this complaint to have been done by the defendant corporation were authorized, ordered or done by the officers, agents or employees of said corporation.

III

CO-CONSPIRATORS

5. Various drug wholesaling corporations, not made defendants herein, participated as co-conspirators with the defendant in the offense herein-after charged through their officers, agents and employees who performed acts and made statements in furtherance of said offense. These co-conspirators are sometimes hereinafter referred to collectively as wholesaler co-conspirators and include the following corporations engaged in the business of wholesaling pharmaceutical products in the District of Columbia and the State of Virginia:

- (a) District Wholesale Drug Corporation - Washington, D. C.
- (b) Washington Wholesale Drug Exchange, Inc. - Washington, D. C.
- (c) The Henry B. Gilpin Company, Inc. - Washington, D. C.
- (d) Powers-Taylor Drug Company - Richmond, Virginia
- (e) Murray Wholesale Drug Company - Norfolk, Virginia

6. Various other persons, firms and corporations not made defendants herein have also participated as co-conspirators with the defendant and wholesaler co-conspirators in the offense herein-after charged and have performed acts and made statements in furtherance thereof. These co-conspirators are sometimes hereinafter referred to as retailer co-conspirators and include various retail druggists conducting business as retail druggists in the District of Columbia and the State of Virginia.

IV

DEFINITIONS

7. Wherever any of the following terms shall be used in this complaint it shall be deemed to have the meaning hereinafter defined:

- (a) "Pharmaceutical products" means prescription and non-prescription drugs and medicines, and includes vitamins.
- (b) "Wholesaler" means a person, firm, or corporation

purchasing pharmaceutical products for resale to retailers thereof.

(c) "Retailer" means a person, firm, or corporation purchasing pharmaceutical products for resale to ultimate consumers.

V

NATURE OF TRADE AND COMMERCE

8. The defendant Parke, Davis is one of the country's principal manufacturers and distributors of pharmaceutical products. Parke, Davis has its principal plant for the manufacture of pharmaceutical products in the State of Michigan. It sells and distributes in interstate commerce from said principal plant large quantities of its products to wholesalers and retailers in the District of Columbia, in the State of Virginia, and in the other States of the United States.

9. The defendant has organized branch offices in various sections of the United States through which it sells and distributes its products to wholesalers and retailers. The Baltimore branch office, under the supervision of the home office in Detroit, sells and distributes the products of defendant Parke, Davis to wholesalers and retailers in the District of Columbia, in Virginia, and in other States within its territory.

10. There are two channels utilized by the defendant Parke, Davis to accomplish the sale and distribution of its products to the ultimate consumers in the District of Columbia and in Virginia. One channel leads from the defendant Parke, Davis, through wholesalers, to retailers and thence to consumers. When this channel is used the wholesaler places orders for and receives shipments of the defendant's products from the Baltimore branch office of the defendant or directly from its principal plant in Michigan.

11. The other channel leads from the defendant Parke, Davis directly to retailers, and thence to ultimate consumers. When this channel is used the retailer places orders for and receives shipments of the defendant's products direct from the defendant's Baltimore branch office, or directly

from the defendant's principal plant in Michigan. Wholesalers neither place any charge upon nor receive any profits from these direct sales to the retailers.

12. In selling its pharmaceutical products directly to retailers, defendant Parke, Davis is acting as a wholesaler and competing with wholesalers to whom it sells its pharmaceutical products for resale to retailers.

VI

OFFENSE CHARGED

13. Beginning in or about July 1956, and continuing thereafter up to and including the date of the filing of this complaint, the defendant, the co-conspirators herein named, and others to the plaintiff unknown, knowingly have entered into and engaged in an unlawful combination and conspiracy to establish, maintain, enhance, and fix the wholesale and retail prices on pharmaceutical products manufactured by defendant Parke, Davis in unreasonable restraint of the hereinbefore described trade and commerce within the District of Columbia and between the District of Columbia, the State of Virginia and the several States, and in violation of Sections 1 and 3 of the Act of Congress of July 2, 1890, as amended (15 U.S.C., Secs. 1 and 3) commonly known as the Sherman Act. Said unlawful combination and conspiracy is continuing and will continue unless the relief hereinafter prayed for in this complaint is granted.

14. The aforesaid combination and conspiracy has consisted of a continuing agreement, understanding and concert of action among the defendant, co-conspirators and others to the plaintiff unknown, the substantial terms of which have been and are that they agree:

(a) That on sales of pharmaceutical products manufactured by defendant Parke, Davis the wholesaler co-conspirators and retailer co-conspirators will adhere to resale prices fixed by defendant Parke, Davis;

(b) That the defendant and the wholesaler co-conspirators will refuse to sell pharmaceutical products manufactured by

defendant Parke, Davis to retailers who do not agree to adhere to resale prices fixed by defendant Parke, Davis;

(c) That the retailer co-conspirators will not advertise pharmaceutical products manufactured by defendant Parke, Davis at prices lower than the resale prices fixed by defendant Parke, Davis;

(d) That the defendant and the wholesaler co-conspirators will refuse to sell pharmaceutical products manufactured by defendant Parke, Davis to retailers who advertise such products at prices lower than the resale prices fixed by defendant Parke, Davis;

(e) That the defendant will induce, coerce and compel wholesalers not to sell pharmaceutical products manufactured by defendant Parke, Davis to retailers who sell or advertise such products at prices lower than the resale prices fixed by defendant Parke, Davis; and

(f) That defendant and the wholesaler co-conspirators will sell pharmaceutical products manufactured by defendant Parke, Davis only to retailers licensed to fill or dispense prescriptions.

15. During the period of time covered by this complaint and for the purpose of effectuating the aforesaid combination and conspiracy, the defendant and the co-conspirators, by agreement, understanding, and concert of action, have done the things which, as hereinbefore alleged, they combined and conspired to do.

VII

EFFECTS

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

(a) Forcing consumers to pay high, arbitrary and non-competitive prices for pharmaceutical products manufactured by defendant Parke, Davis; and

(b) Preventing retailers from filling prescriptions for pharmaceutical products manufactured by defendant Parke, Davis.

SECOND CAUSE OF ACTION

17. Each and every allegation contained in this complaint in paragraph numbers 1 through 12, except paragraphs 5 and 6, is here realleged.

I

CO-CONSPIRATOR

18. The Washington Wholesale Drug Exchange, Inc., not made a defendant herein, participated as a co-conspirator in the offense hereinafter charged through its officers, agents and employees who performed acts and made statements in furtherance of said offense.

II

OFFENSE CHARGED

19. Beginning in or about October 1955, the exact date being to the plaintiff unknown, and continuing to and including the date of the filing of this complaint defendant and co-conspirator, together with other persons to the plaintiff unknown, have engaged in an unlawful combination and conspiracy in unreasonable restraint of the hereinbefore described trade and commerce within the District of Columbia and between the District of Columbia and the several States, and in violation of Section 3 of the Act of Congress of July 2, 1890, as amended (15 U.S.C., Sec. 3) commonly known as the Sherman Act.

20. The aforesaid combination and conspiracy has consisted of a continuing agreement and concert of action between defendant and co-conspirator, the substantial term of which has been and is that they agree that the granting of discounts or dividends to retailers on their purchases from the co-conspirator of pharmaceutical products manufactured by defendant Parke, Davis be discontinued.

21. During the period of time covered by this complaint and for the purpose of effectuating the aforesaid combination and conspiracy, the defendant and the co-conspirator, by agreement, understanding, and concert

of action, have done the things which, as hereinbefore alleged, they combined and conspired to do.

III.

EFFECTS

22. The aforesaid combination and conspiracy has had the effects, among others, of:

- (a) Eliminating price competition between defendant Parke, Davis and the co-conspirator.
- (b) Denying discounts and dividends to retailers on their purchases from the co-conspirator of pharmaceutical products manufactured by defendant Parke, Davis.
- (c) Preventing retailers from passing on to consumers the benefits of discounts on pharmaceutical products manufactured by defendant Parke, Davis.

PRAYER

WHEREFORE, the plaintiff prays:

1. That the Court adjudge and decree that the defendant has combined and conspired in restraint of the trade and commerce hereinabove described in violation of Sections 1 and 3 of the Sherman Act.
2. That the defendant, its officers, directors, agents and employees, and all persons acting or claiming to act on behalf of the defendant be perpetually enjoined and restrained from continuing to carry out, directly or indirectly, the combination and conspiracy to restrain the sale and distribution of pharmaceutical products as hereinbefore alleged, or any similar combination or conspiracy to restrain the trade and commerce in the sale and distribution of pharmaceutical products.
3. That defendant, its officers, directors, agents and employees, be perpetually enjoined from boycotting, attempting to boycott, persuading or inducing others to boycott, any person, firm, or corporation because said person, firm or corporation sells or advertises for sale pharmaceutical products below defendant's suggested resale price.

4. That defendant, its officers, directors, agents and employees, be perpetually enjoined from refusing to sell, persuading or inducing others to refuse to sell pharmaceutical products of the non-prescriptive class to persons, firms, or corporations who are not licensed to fill or dispense prescriptions.

5. That defendant, its officers, directors, agents and employees, be perpetually enjoined from boycotting, or attempting to boycott, any person, firm or corporation engaged in the business of wholesaling pharmaceutical products because said person, firm or corporation grants discounts or dividends to retailers who purchase defendant's pharmaceutical products.

6. That the plaintiff recover the costs of this action.

/s/ HERBERT BROWNELL, JR.
HERBERT BROWNELL, JR.
Attorney General

/s/ EDWARD R. KENNEY
EDWARD R. KENNEY

/s/ VICTOR R. HANSEN
VICTOR R. HANSEN
Assistant Attorney General

/s/ HERBERT F. PETERS, JR.
HERBERT F. PETERS, JR.

/s/ OLIVER GASCH
OLIVER GASCH
United States Attorney

/s/ MARSHALL C. GARDNER
MARSHALL C. GARDNER

/s/ WORTH ROWLEY
WORTH ROWLEY
Attorney, Department of Justice

/s/ RICHARD C. SHADYAC
RICHARD C. SHADYAC
Attorneys, Department of Justice