

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	Civil Action No. 99-005
)	
vs.)	
)	
DENTSPLY INTERNATIONAL, INC.,)	
)	
Defendant.)	

COMPLAINT

The United States of America, acting under the direction of the Attorney General of the United States, brings this action for equitable and other relief against Dentsply International, Inc. ("Defendant") to prevent and enjoin Defendant from continuing to violate the antitrust laws by a variety of actions that unlawfully maintain its monopoly power and deny competing manufacturers of artificial teeth access to independent distributors (known in the industry as "dealers"). These dealers are a valuable and necessary means of effective distribution of artificial teeth in the United States. Specifically, Dentsply has: (1) entered into agreements and taken other actions to induce dealers not to carry certain competing lines of teeth; and (2) explicitly agreed with some dealers that the dealers will not carry certain competing lines of teeth. Among other things, Dentsply has threatened to refuse to sell teeth and other merchandise to dealers if they add certain lines of competing teeth, and on the rare occasions when a dealer has dared to offer the lines in question, has carried out its threat and terminated the dealer. As a result of this conduct, 80% of the dealer outlets in the United States that carry artificial teeth do

not carry brands that compete closely with Dentsply's premium products. For over a decade, Dentsply, the dominant manufacturer of artificial teeth in the United States, through these means has wilfully maintained a monopoly and unreasonably restrained competition in the market for prefabricated artificial teeth in the United States.

Dentsply initiated its efforts to lock up the dealers in 1987, when two competitors whose products compete closely with Dentsply's premium artificial teeth in quality and price were attempting to build a dealer network. In the intervening years, other competitors and potential competitors have been deprived of the opportunity to distribute their products efficiently. As Dentsply intended, its actions have foreclosed these rivals from selling their teeth through the large majority of outlets in the United States that carry artificial teeth, have impaired the ability of other artificial tooth manufacturers to develop or maintain an adequate dealer network, and have deterred new entrants from the market for artificial teeth.

Dentsply's actions have deprived consumers of the benefits of competition among artificial tooth manufacturers and resulted in higher prices, fewer choices, less market information, and lower quality for artificial teeth.

I. JURISDICTION AND VENUE

1. The United States files this Complaint under Section 4 of the Sherman Act, 15 U.S.C. § 4, as amended, and under Section 15 of the Clayton Act, 15 U.S.C. § 25, to prevent and restrain a continuing violation by Defendant of Sections 1 and 2 of the Sherman Act, 15 U.S.C. §§ 1 and 2, and Section 3 of the Clayton Act, 15 U.S.C. § 14.

2. Defendant transacts business in, and is found within, the District of Delaware, all within the meaning of 15 U.S.C. § 22.

3. Defendant and other artificial tooth manufacturers ship teeth across state lines. Defendant receives substantial payments across state lines from the sale of artificial teeth to dealers. Other artificial tooth manufacturers are attempting to compete with Defendant to make these interstate sales. Defendant's business activities that are the subject of this Complaint are within the flow of, and substantially affect, interstate trade and commerce.

II. DEFENDANT

4. Defendant is a Delaware for-profit corporation and has its corporate headquarters in York, Pennsylvania. Defendant manufactures a range of dental products which are marketed, distributed, and sold world-wide. Through its Trubyte Division, Defendant manufactures and markets products used by dental laboratories to make dentures and other removable dental prosthetics. The sale of artificial teeth generates most of the revenues of the Dentsply Trubyte Division.

III. RELEVANT MARKETS

5. The relevant market for purposes of this action is the sale of prefabricated, artificial teeth in the United States. The relevant product--prefabricated, artificial teeth--is highly differentiated in price and quality and is commonly segmented in the industry by the

terms “premium,” “mid-range,” “economy,” and “subeconomy.” Premium artificial teeth offer more life-like quality, more natural shades, and greater wear resistance than less expensive teeth.

6. Dentsply now holds, and since at least 1987, has held monopoly power in this relevant market.

IV. DENTSPLY’S PRACTICES

A. Sales and Use of Artificial Teeth

7. In 1996, Dentsply sold 70 to 80% of the artificial teeth used in the United States. It has held that approximate market share for at least ten years.

8. Almost all artificial teeth sold in the United States are used by dental laboratories to make dentures. Dental laboratories are engaged in two distinct lines of business: crown and bridge work, and dentures. Crown and bridge work produces a fixed dental prosthetic device that generally does not include pre-fabricated artificial teeth. A denture, in contrast, is a removable prosthetic device comprised of pre-fabricated artificial teeth fixed in an acrylic base material to replace some or all of a person’s natural teeth. Artificial teeth are the single most expensive component of a denture. Dental laboratories generally use pre-fabricated artificial teeth in making dentures.

9. Dental laboratories distinguish among artificial teeth based upon price and quality. For example, dental laboratories pay significantly higher prices for premium teeth.

10. Dentsply manufactures artificial teeth in the premium, mid-range, and economy segments. Dentsply's premium teeth are its most profitable lines and generate most of the Trubyte Division's revenue. The Dentsply Trubyte Division also manufactures other merchandise used by dental laboratories in the fabrication of dentures. Some of the Dentsply Trubyte Division's merchandise is widely used and frequently demanded by dental laboratories.

11. A handful of companies compete with Dentsply in this country and elsewhere in the manufacture and sale of artificial teeth. Two manufacturers of premium artificial teeth, Vita Zahnfabrik ("Vita") and Ivoclar AG ("Ivoclar"), compete successfully outside the United States against Dentsply and have succeeded, in at least one country, in unseating Dentsply as the dominant brand. Vita's and Ivoclar's teeth are comparable in quality and value to Dentsply's premium teeth and, by some measures, are superior to Dentsply's premium teeth.

12. In the 1980s, Vita and Ivoclar began exporting their artificial teeth into the United States market. Ivoclar exports its teeth through a wholly-owned subsidiary. Vita exports its teeth through Vident, a company that it partially owns. Despite their substantially greater success elsewhere in the world, Vita and Ivoclar teeth combined account for less than 10% of the artificial tooth sales by dollar in this country.

13. Domestic artificial tooth manufacturers also compete more successfully with Dentsply outside the United States. For example, Austenal, Inc. manufactures and sells the "Myerson" premium tooth line. While the Myerson line has sold well in countries where it has better access to dealers, it has done significantly less well in the United States, where it is carried

by only a small number of dealers. During the last five years, Austenal has attempted without success to obtain additional dealers for the Myerson line.

B. Dentsply's Restrictive Dealing Arrangements

14. Dental laboratory dealers have been, and continue to be, the primary channel of distribution of artificial teeth to dental laboratories. These dental laboratory dealers stock the full array of products needed to make dentures, not just artificial teeth. Most dental laboratory dealers employ skilled sales and service people and provide a variety of services to their dental laboratory customers, including regular ordering and restocking of inventory, new product demonstrations, tooth returns and exchanges, technical know-how, and delivery services. Dental laboratory dealers generally are able to satisfy dental laboratories' need for same or next day delivery through their own sales people, a delivery service, or by maintaining walk-up tooth counters, staffed by dedicated tooth counter personnel, at the dealers' warehouses.

15. Although some artificial tooth manufacturers sell directly to dental laboratories, both artificial tooth manufacturers and most dental laboratories prefer to work through established dental laboratory dealers located near laboratories. As a result, manufacturers of artificial teeth need to distribute through local dental laboratory dealers throughout the country in order to compete effectively.

16. Dentsply's Trubyte Division distributes its teeth through a network of 33 independent dental laboratory dealers with over 168 outlets throughout the United States,

constituting approximately 80% of the outlets distributing artificial teeth and other dental laboratory products. Dentsply does not sell its Trubyte products directly to dental laboratories.

17. The independent dealers through which Dentsply distributes its artificial teeth are the most significant and successful of the firms that distribute supplies to dental laboratories in the United States. They sell dental laboratory products other than artificial teeth made by a variety of dental product manufacturers. While manufacturers of dental products commonly engage in joint selling with the dealers and provide training in, and technical information regarding, the use of their specific products, the dealers market themselves under their own names and establish independent relationships with their laboratory customers based on their own service and price. Before Dentsply imposed its restrictive dealing arrangements in 1987, Dentsply did not restrain these independent dealers' ability to sell the artificial teeth of other manufacturers, and the dealers commonly carried at least two competing lines of artificial teeth.

18. A number of distributors sell dental products to customers other than dental laboratories. For example, some distributors sell dental products exclusively to dentists (known as "operator dealers") and do not compete for the business of dental laboratories. Dentists purchase a wide range of products that dental laboratories do not need or purchase, and dental laboratories for their part purchase a wide range of products that dentists generally do not need or purchase. An operator distributor, that does not also already sell to dental laboratories, cannot quickly or easily expand into the business of distributing the broad range of products used by dental laboratories.

19. Starting at least as early as 1987 and continuing through today, first Ivoclar and then Vita attempted to establish a network of dental laboratory dealers to sell and distribute their artificial teeth to dental laboratories in the United States. More recently, Austenal and other manufacturers have sought to increase their dealer networks as well.

20. In 1987, two independent dental laboratory dealers agreed to carry Ivoclar's line. Those dealers already carried other brands of artificial teeth, including Dentsply's Trubyte brand. Dentsply reacted by threatening to terminate the dealers. One of the dealers abandoned its plans to distribute Ivoclar teeth. The other dealer, Frink Dental, located in Elk Grove, Illinois, attempted to go forward with its plans. Dentsply's highest level officials, including its Chief Executive Officer and the General Manager of its Trubyte Division, flew to Illinois to tell Frink that they would not permit Ivoclar to obtain distribution in the United States. Dentsply then cut off Frink's supply of Trubyte artificial teeth and other Trubyte merchandise. Frink continued to sell Ivoclar teeth for a time but eventually agreed to stop distributing Ivoclar teeth in return for reinstatement as a dealer of Trubyte products. Dentsply did not require Frink to drop its other, preexisting lines of competing teeth.

21. In the 1980s, Vita placed its teeth with The Tooth Counter, an independent dealer in the Chicago area that did not carry Dentsply's teeth but did carry a number of other brands of artificial teeth. Dentsply at first rejected requests from The Tooth Counter to carry its teeth. In 1992, after Dentsply learned that The Tooth Counter was selling Vita teeth, Dentsply offered The Tooth Counter the opportunity to sell Trubyte teeth. Dentsply required The Tooth Counter

to agree not to carry the Vita line but permitted it to continue selling its other lines of teeth. The Tooth Counter agreed to these terms.

22. In 1993, Dentsply imposed written "Dealer Criteria" for its Trubyte Division. These Dealer Criteria set forth various conditions for continuing as or becoming an independent dealer of Trubyte products. "Dealer Criterion Number 6" states that dealers "may not add further tooth lines to their product offering." Dentsply has actively monitored compliance with its criteria, enforced the criteria by warning dealers not to add new lines of teeth and terminating dealers that did add new lines, and entered into express agreements with some dealers to assure their partial or complete compliance with the criteria.

23. When terminating a dealer for adding a new competing line of teeth, Dentsply refuses to sell the dealer not only its artificial teeth but also other Trubyte merchandise, some of which is frequently sought by dental laboratories from their dealers.

24. Dentsply's dominant position in the United States necessarily means that many dental laboratories currently use Dentsply Trubyte teeth and expect their dealers to have the Trubyte line available. Thus, a dealer that is currently selling Trubyte teeth may lose a significant volume of business if it is suddenly unable to supply its laboratory customers with Trubyte teeth. Moreover, because a laboratory buys many products from its dealer, the dealer's loss of a laboratory account due to not having Trubyte teeth will likely lead it to lose significant other sales as well.

25. The detrimental impact on dealers of losing Dentsply Trubyte teeth is aggravated by Dentsply's refusal to sell non-tooth Trubyte merchandise to dealers that add competing lines

of teeth. The loss of this Trubyte merchandise by itself may cause some laboratories to switch their accounts in whole or in part from the terminated dealer to another dealer.

26. Dealers' exchange accounts with Dentsply further increase dealers' economic disincentive to add competing tooth lines. These accounts reflect credit that Dentsply owes dealers against future purchases of teeth. Laboratories buy artificial teeth on cards containing 6 or 8 teeth. The laboratories frequently do not use all the teeth on a card in making a particular denture. Dealers collect these unused teeth from the laboratories and credit the value of the returned teeth against the laboratories' future purchases. The dealers then return the teeth to Dentsply, which in turn gives the dealers credit against future purchases. The dealers' understanding with Dentsply is that a terminated dealer cannot apply its exchange account against future purchases, since it is not permitted to make additional purchases. Dentsply will not settle the exchange account of a terminated dealer for cash, but it may provide Trubyte teeth to the terminated dealer to close out the account. The cash value of that account significantly exceeds the value to the terminated dealer of any Trubyte teeth Dentsply might then give the dealer. Essentially, the terminated dealer forfeits most of the cash value of the exchange account to Dentsply.

27. Dentsply's practices have deterred dealers from adding competing lines of teeth, and no existing dealer of Dentsply's artificial teeth has added a new tooth line since Dentsply first terminated Frink in 1987.

28. Dentsply also has blocked its competitors' access to dealers that did not previously carry Dentsply's teeth. Just as it did with The Tooth Counter, Dentsply has induced

dealers to drop or not add Vita's and Ivoclar's teeth by recruiting them as new dealers of Trubyte teeth on the condition that they not sell Vita and Ivoclar teeth. Dentsply has on occasion signed a new dealer it had previously rejected to prevent the dealer from beginning to sell a competitor's teeth. Given Dentsply's dominant market position, these non-Trubyte dealers face economic incentives to drop or not add competing lines of teeth and deal exclusively with Dentsply, whenever given an opportunity to do so. Faced with the dilemma of accepting a slice of Dentsply's dominant share of the artificial tooth market but then having to drop or refuse Vita and Ivoclar teeth, most dealers are compelled by economic realities to add the Trubyte line and no longer offer their customers the competing brands.

29. For example, Dentsply's addition of Darby Dental Supply, Inc., deprived Vita of a potential dealer. Dentsply had previously terminated Darby because Darby sold a private-label brand of artificial teeth. After Darby filed an antitrust lawsuit, Dentsply agreed to allow Kent, a subsidiary of Darby, to sell Trubyte teeth. Darby continued to sell its private-label brand of teeth but Dentsply did not permit it to sell Trubyte teeth through its Darby operations. In 1994, Dentsply learned that Darby was considering adding the Vita line. In response, Dentsply's Senior Vice President for North America specifically approved an "action plan" intended to block Vita from gaining "a major distribution point." The "key issue" in Dentsply's adopting that plan was "Vita's potential distribution system." Dentsply recognized that Vita was "having a tough time getting teeth out to customers. One of their key weaknesses is their distribution system." Accordingly, Dentsply decided to "threaten to cut-off Kent unless Darby agree[d]" not

to add the Vita line and to drop some lines, but not all, of its house brand. Darby agreed to these restrictive conditions.

C. Exclusion of Dentsply's Competitors

30. Dentsply's refusals to deal and restrictive agreements, as well as other similar and related acts, were designed to and have thwarted Vita's and Ivoclar's attempts to build a dealer network and thus their ability to compete effectively in the United States.

31. Dentsply's conduct has also undermined the efforts of small domestic competitors of Dentsply in the United States to maintain or recruit dental laboratory dealers. Dentsply has successfully induced some dealers to stop distributing these small manufacturers' teeth. Once a dealer drops a preexisting competing tooth line, Dealer Criterion Number 6 prevents the dealer from renewing its distribution of that line.

32. Dentsply's lock on distribution has delayed the possible entry of a substantial foreign competitor into the domestic market and has contributed to the decision of one major United States company not to begin manufacturing and selling artificial teeth in this country.

33. Rival manufacturers have no reasonable or effective means of combating Dentsply's lock on the national independent laboratory dealer network. Nor are rival manufacturers able to obtain effective, alternative channels of distribution. Direct sales to dental laboratories are not a reasonable or adequate substitute for the established dealers because laboratories want and need the various services dealers provide and have strong existing relationships with dealers. Nor can rival manufacturers reasonably or effectively employ larger

laboratories to serve as distributors to smaller, competing laboratories. Also, the existing dental laboratory dealers not subject to retaliation from Dentsply for adding a new line of teeth are too few and too small to serve adequately as an effective distribution network. These dealers are not likely to expand their operations, and operatorial dealers that do not currently serve laboratories cannot readily expand into that multi-product laboratory business simply to take advantage of the opportunity to carry Vita's, Ivoclar's, and other manufacturers' teeth. Finally, rival manufacturers cannot profitably integrate into the distribution of artificial teeth and other dental laboratory products.

34. Dentsply's foreclosure of its rivals' access to adequate distribution has been successful in restricting competition in the market for pre-fabricated artificial teeth for over ten years and, absent court order, is likely to continue to foreclose competition.

35. Dentsply has refused to deal, imposed and enforced its restrictive dealing arrangements, and taken other anticompetitive actions for the purpose and with the effect of reducing or eliminating competition in the sale of artificial teeth in the United States and maintaining a monopoly in that market. Indeed, Dentsply maintains more dealers than it believes are needed to distribute its products and has added new dealers despite its overly broad distribution network in order to deprive its rivals of effective distribution. Dentsply documents reflect its intent to block its rivals' access to dealers. For example, a document captioned, "Sales/Distribution Principles of Cash Cow Business," sets out the following goals:

* BLOCK COMPETITIVE DISTRIBUTION
POINTS. DO NOT ALLOW COMPETITION TO
ACHIEVE TOEHOLDS IN DEALERS.

-- TIE-UP DEALERS
-- DO NOT "FREE-UP" KEY PLAYERS

V. ANTICOMPETITIVE EFFECTS

36. Dentsply's refusals to deal, restrictive dealing arrangements, and other anticompetitive acts as alleged in this Complaint have effectively deprived rival tooth manufacturers of access to the vast majority of, and the most important, sales outlets for artificial teeth in the United States and, therefore, of the ability to compete effectively in the United States market for prefabricated, artificial teeth.

37. Dentsply's exclusion of its rivals has resulted in higher prices, loss of choice, less market information, and lower quality for artificial teeth. But for Dentsply's acts, additional dental laboratory dealers would distribute Ivoclar's, Vita's, and other manufacturers' artificial teeth. But for Dentsply's acts, additional artificial tooth manufacturers would have attempted to enter the United States market. But for Dentsply's acts, prices for teeth would be lower. Moreover, laboratories would have a greater choice of teeth and more market information about competing teeth. Ultimately, but for Dentsply's acts, dentists and dental patients would have received lower-priced, higher-quality, and more-desirable dentures.

38. The lack of a substantial dealer network has frustrated other tooth manufacturers' efforts to encourage dental laboratories to use their brands of teeth and has led them to curtail their promotional efforts, because doing so would be futile without an adequate dealer network.

39. Dentsply intends to refuse to deal with, and to enforce its restrictive dealing arrangements against, dealers who, in the future, add, or attempt to add, competitive lines of artificial teeth. Dentsply's exclusionary conduct will continue to prevent rival tooth manufacturers from access to the primary distribution channels of artificial teeth, thus continuing to restrain price and quality competition for artificial teeth and to reduce consumer information and choice. Dentsply's conduct is not justified by efficiencies or legitimate business considerations.

VI. FIRST CAUSE OF ACTION

(Violation of § 2 of the Sherman Act)

40. The allegations of ¶¶ 1-39 of this Complaint are re-alleged and incorporated by reference here with the same force and effect as though said paragraphs were set forth here in full.

41. From at least as early as 1987 and continuing at least through the filing of this Complaint, Dentsply has wilfully maintained a monopoly in the United States market for pre-fabricated artificial teeth, and abused its monopoly power in the relevant market, by explicitly agreeing with some dealers that the dealers will not carry certain lines of teeth and inducing other dealers not to carry those competing lines of teeth, in violation of Section 2 of the Sherman Act, 15 U.S.C. § 2.

VII. SECOND CAUSE OF ACTION

(Violations of § 3 of the Clayton Act
and § 1 of the Sherman Act)

42. The allegations of ¶¶ 1-41 of this Complaint are re-alleged and incorporated by reference here with the same force and effect as though said paragraphs were set forth here in full.

43. From at least as early as 1987 and continuing at least through the filing of this Complaint, Dentsply has entered into restrictive dealing agreements with dental laboratory dealers, maintained and enforced these agreements, otherwise acted in concert with those dealers, and sold artificial teeth on the condition that those dealers not deal with rival manufacturers, thereby causing a substantial lessening of competition in the market for pre-fabricated artificial teeth sold in the United States, in violation of Section 3 of the Clayton Act, 15 U.S.C. § 14, and unreasonably restraining trade in that market in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1.

44. Dentsply has market power in the market for pre-fabricated artificial teeth sold in the United States. Dentsply has exercised and maintained that market power through its agreements with dental laboratory dealers.

VIII. REQUEST FOR RELIEF

WHEREFORE, the Plaintiff requests:

1. That the Court adjudge and decree that Dentsply acted unlawfully to maintain a monopoly in violation of Section 2 of the Sherman Act, 15 U.S.C. § 2.
2. That the Court adjudge and decree that Dentsply (a) entered into unlawful restrictive dealing agreements that substantially lessen competition in violation of Section 3 of the Clayton Act, 15 U.S.C. § 14, and (b) entered into unlawful agreements in unreasonable restraint of interstate trade and commerce in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1.
3. That Dentsply, its members, officers, directors, agents, employees, and successors, and all other persons acting or claiming to act on its behalf, be enjoined, restrained, and prohibited from, in any manner, directly or indirectly, continuing, maintaining, or renewing these agreements, or from engaging in any other combination, conspiracy, agreement, understanding, plan, program, or arrangement having the same effect as the alleged violations.
4. That the United States recover the costs of this action.

5. That the United States have such other relief as the nature of the case may require and the Court may deem just and proper.

January 5, 1999

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