

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF COLUMBIA

_____)	
)	
UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	Civil Action No. 79-2579
)	
v.)	Filed: September 27, 1979
)	
UNDER SEA INDUSTRIES,)	
INCORPORATED,)	
)	
Defendant.)	
)	
_____)	

COMPLAINT

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 to obtain equitable relief against the above-named defendant, and complains and alleges as follows:

I

JURISDICTION AND VENUE

1. This complaint is filed and these proceedings are instituted under Section 4 of the Sherman Act (15 U.S.C. §4), in order to prevent and restrain the violation by the defendant, as hereinafter alleged, of Section 1 of said Act (15 U.S.C. § 1).

2. Defendant Under Sea Industries, Incorporated, transacts business and is found within the District of Columbia.

II

DEFINITIONS

3. As used herein, the term:

- (a) "scuba diving equipment" means products used to facilitate surface and underwater aquatic sport

diving, including, but not limited to, self-contained underwater breathing apparatus, underwater gauges, flotation and bouyancy control vests, underwater lights, wetsuits, facemasks, snorkels, fins, and other similar or allied equipment;

- (b) "Scubapro equipment" means scuba diving equipment (as defined herein) manufactured, assembled or sold by Under Sea Industries under the trademark "Scubapro";
- (c) "dealer" means an individual or business entity which specializes in selling scuba diving equipment primarily at the retail level;
- (d) "Scubapro dealer" means a dealer (as defined herein) which has been selected and authorized by Under Sea Industries to resell and service Scubapro equipment.

III

DEFENDANT

4. Under Sea Industries, Incorporated (hereinafter referred to as USI), is made the defendant herein. It is a corporation organized and existing under the laws of the State of Delaware and has its principal place of business in Compton, California. USI is engaged in the manufacture, assembly and sale of scuba diving equipment.

IV

CO-CONSPIRATORS

5. Various individuals and business entities not made defendants in this complaint have participated as co-conspirators in the violations hereafter alleged and have performed acts and made statements in furtherance thereof.

V

TRADE AND COMMERCE

6. USI is the second largest scuba diving equipment manufacturer in the United States. For the fiscal year ending June 30, 1978, USI's sales of scuba diving equipment in the United States totaled approximately \$9,675,000.

7. USI manufactures Scubapro equipment at its plants in California and ships Scubapro equipment to its warehouses in New York and Hawaii and directly to dealers located throughout the United States. USI also ships Scubapro equipment from its warehouse in New York to dealers located throughout the United States. Scubapro dealers in turn resell Scubapro equipment to consumers, and occasionally to other dealers, located throughout the United States. There is a continuous flow in interstate commerce of Scubapro equipment from the Scubapro plants in the State of California and from the Scubapro warehouses in New York and Hawaii through Scubapro dealers to consumers and others located throughout the United States.

8. The activities of defendant USI and its co-conspirators, as hereinafter described, are within the flow of, and substantially affect, interstate commerce.

VI

VIOLATION ALLEGED

9. Beginning at least as early as 1963 and continuing to the date of this complaint, defendant USI and co-conspirators have engaged in an unlawful combination and conspiracy in unreasonable restraint of the aforesaid interstate trade and commerce in violation of Section 1 of the Sherman Act (15 U.S.C. §1). This violation will continue unless the relief hereinafter prayed for is granted.

10. The aforesaid combination and conspiracy has consisted of a continuing agreement, understanding and concert of action among defendant and co-conspirators, the substantial terms of which, among others, have been that:

- (a) Scubapro dealers will sell Scubapro equipment at prices fixed by defendant USI;
- (b) Scubapro dealers and defendant USI will refrain from selling Scubapro equipment to dealers who advertise or sell Scubapro equipment at prices lower than those fixed by defendant USI; and
- (c) Scubapro dealers will notify USI of the sale of Scubapro equipment at prices other than those fixed by defendant USI in order that USI can take steps to eliminate such sales.

11. For the purpose of forming and effectuating the aforesaid combination and conspiracy, the defendant and co-conspirators have done those things which they combined and conspired to do.

VII

EFFECTS

12. The unlawful combination and conspiracy has had the following effects, among others:

- (a) retail prices of Scubapro equipment have been fixed, stabilized and maintained at non-competitive and artificial levels;
- (b) price competition among Scubapro dealers in the sale and distribution of Scubapro equipment has been suppressed and eliminated;
- (c) consumers have been deprived of the opportunity of buying Scubapro equipment manufactured or distributed by defendant USI at competitive prices; and

- (d) Scubapro dealers have been prevented from selling Scubapro equipment at prices other than those set by USI.

PRAYER

WHEREFORE, plaintiff prays:

1. That the Court adjudge and decree that the defendant has engaged in an unlawful combination and conspiracy in restraint of the aforesaid trade and commerce in violation of Section 1 of the Sherman Act (15 U.S.C. § 1).

2. That the defendant, its officers, directors, agents, employees and successors and all other persons acting or claiming to act on its behalf be enjoined and restrained from, in any manner, directly or indirectly, continuing, maintaining, or renewing the combination and conspiracy hereinbefore alleged, or from engaging in any other combination, conspiracy, contract, agreement, understanding or concert of action having a similar purpose or effect, and from adopting or following any practice, plan, program, or device having a similar purpose or effect.

3. That the defendant be required to advise all of its dealers in writing that they may sell Scubapro equipment at such prices as they may choose.

4. That the defendant be required to revise its current and future dealer franchise agreements and understandings, catalogs, Dealer and Retail price lists and other materials so as to conform to the provisions of the judgment entered in this case.

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

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


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