

UNITED STATES DISTRICT COURT
DISTRICT OF DELAWARE

DENTSPLY INTERNATIONAL, INC.,

Plaintiff,

v.

ANTITRUST DIVISION OF THE UNITED
STATES DEPARTMENT OF JUSTICE,

Defendant.

**COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF**

Plaintiff Dentsply International, Inc. (“Dentsply”) brings this complaint against defendant the Antitrust Division of the United States Department of Justice (“Antitrust Division”) and complains and alleges as follows:

The Parties

Plaintiff Dentsply International, Inc. is a Delaware corporation with its principal place of business in York, Pennsylvania. Dentsply is engaged in the design, development, manufacture, distribution and sale of dental products and equipment in the United States and throughout the world.

Defendant Antitrust Division is a division of the Department of Justice, an agency of the United States government, with its principal place of business in Washington, D.C.

Jurisdiction And Venue

This Court has jurisdiction of the subject matter of this action under the Declaratory Judgments Act, 28 U.S.C. ? 2201 et seq., and under 28 U.S.C. ?? 1331, 1337(a) and for review of final agency action under 5 U.S.C. ?? 701 et seq.

Venue is proper in this judicial district under 28 U.S.C. ? 1391(e) because it is the district in which Dentsply resides.

Nature Of The Controversy

The Distribution Of Artificial Teeth

This complaint for declaratory relief arises out of the Antitrust Division?s long running investigation of Dentsply?s manufacture, distribution and sale of artificial teeth used in the fabrication of dentures.

Founded in 1899, Dentsply is a leading manufacturer and distributor of products and equipment for the dental market. Through its Trubyte Division, Dentsply manufactures and sells artificial teeth and complementary products such as denture base acrylic, waxes, gypsums and denture curing appliances that are used by dental laboratories in the fabrication of removable or partial dentures. The laboratories fabricate the dentures upon the work order of a dentist, who ultimately provides the denture to the patient.

Dentsply has manufactured artificial teeth at its York facility for almost 100 years, and has been a leading innovator in the technology of artificial teeth. Its Trubyte brand, introduced in 1912 and trademarked in 1930, is the oldest branded artificial tooth product in the United States. Patients and dentists prefer that artificial teeth used in dentures

resemble, as closely as possible, the patient's original teeth. To serve this demand, Dentsply's Trubyte Division today offers a broad range of teeth in differing materials, shapes, shades and cutting surfaces that constitute approximately 14,000 SKUs (stock keeping units).

Dentsply does not sell its artificial teeth directly to the dental laboratories that fabricate dentures, or to the dentists who provide them to patients. Rather, Dentsply sells its artificial teeth through a network of 33 authorized dental products dealers throughout the United States, who in turn resell the artificial teeth to dental laboratories. These dental products dealers maintain large inventories of Trubyte teeth, from which they satisfy laboratory orders, and employ trained personnel to service and support the needs of laboratory customers.

Dentsply and its dental product dealers work as partners in the promotion and sale of Trubyte artificial teeth to dental laboratories. Together, Dentsply sales representatives and dealer representatives call on laboratory customers, train them in the purchase and handling of denture teeth, and handle returns and exchanges. In addition, because Dentsply sells many of its dental products other than artificial teeth through the same dealers, these dealers assist Dentsply in maintaining the relationships with laboratories for the purchase of Dentsply products other than artificial teeth.

There are over 375 dental products dealers in the United States, with over 642 outlets. Trubyte authorized dealers maintain 208 outlets, and account for only 32% of total dental dealer locations in the United States. Dentsply does not have a contractual relationship with its authorized dealers, and sells teeth to them on a purchase order basis.

Seventeen of Trubyte's 33 authorized dealers distribute teeth manufactured by Dentsply's competitors.

Dentsply's Distribution Practices

In February 1993, Dentsply's Trubyte Division formalized a written set of dealer criteria that, in part, provided that dealers recognized as Trubyte authorized dealers could not add competitive tooth lines to their product offerings. These criteria do not preclude Trubyte authorized dealers from continuing to sell competitive tooth lines that they sold prior to publication of the criteria.

Dentsply adopted the dealer criteria to obtain from dealers a maximized level of support for its broad artificial tooth product offerings, and to preclude its competitors from free riding on Dentsply's investment in both dealer training and in establishing a customer base and credibility for its dealers.

In 1994, to promote these business purposes further, Dentsply instituted the Exclusive Trubyte Dealer Program. This program entitles those dealers that carry Trubyte teeth exclusively to earn volume purchase rebates at a higher percentage than non-exclusive dealers. This program offers a financial incentive only. There is no contract or agreement between Dentsply or any dealer to carry only Trubyte teeth for any period of time.

Occasionally, when Dentsply sales representatives are successful in converting a laboratory to Trubyte teeth from those of a competitor, Dentsply will swap the competitor's product for its own. In doing so, Dentsply provides a credit to the laboratory against future sales of Trubyte teeth.

This practice facilitates Dentsply's ability to respond to consignments and other direct sales initiatives of its competitors where laboratories cannot otherwise afford to pursue

their product preferences due to high inventory of competitive products. Dentsply's marketing practice of swapping its teeth for competitive teeth amounts to a temporary price discount to laboratory dealers, but does not amount to pricing below any measure of Dentsply's costs.

Distribution Alternatives To Authorized Trubyte Dealers

Manufacturers have several options for distributing artificial teeth to laboratory end-users in the United States. These include utilizing dental dealers to distribute their products, selling products direct to laboratory end-users, or utilizing a hybrid approach employing both methods. Any of the three methods provides commercially viable competitive access to consuming laboratories.

Because there are only 33 Trubyte authorized dealers of the 375 known dental product dealers, the vast majority of dental dealers are not designated as authorized Trubyte dealers. Moreover, direct sales to laboratories allow suppliers to satisfy the laboratories' requirement for prompt service, while eliminating a significant portion of an independent dealer's margin, thus providing a material pricing advantage over competing brands sold through dealers.

In addition, some suppliers provide teeth to large laboratories on consignment and provide pricing incentives for these laboratories to service the requirements of smaller laboratories. In these instances, the large laboratories essentially act as the suppliers' distributors for the benefit of the smaller laboratories.

In addition to the great number of unaligned dental dealers, one or more alternative distribution channels remains available to Dentsply's competitors for the sale of artificial teeth. Two of Dentsply's Trubyte Division's competitors in the market for artificial teeth products, Vita and Ivoclar, have achieved notable success through the direct distribution of other dental laboratory products *e.g.*, Vita's highly successful crown and bridge products, and Ivoclar's William's line of acrylic systems products.

Many of these same laboratories that purchase crown, bridge, and acrylic systems products from Vita and Ivoclar, also purchase artificial teeth from them directly.

The Antitrust Division's Investigation

On June 6, 1995, the Antitrust Division notified Dentsply that a Civil Investigative Demand had issued (CID No. 13009) pursuant to the Antitrust Civil Process Act, 15 U.S.C. §§ 1311-1314, to determine whether Dentsply's business practices constituted unreasonable restraints of trade, exclusive dealing, and monopolization in connection with the manufacture, distribution and sale of artificial teeth and related products in violation of Sections 1 or 2 of the Sherman Act or Section 3 of the Clayton Act, 15 U.S.C. §§ 1, 2 and 14.

The Antitrust Division's investigation continued over the course of three-and-a-half-years. Dentsply provided over 75,000 documents to the Division relating to its business practices, provided written interrogatory answers, and provided witnesses for deposition. The Antitrust Division deposed Dentsply dealers, non-Dentsply aligned dealers, Dentsply's end-user laboratory customers, as well as Dentsply's competitors. The uncertainty

surrounding the investigation has tainted Dentsply's reputation in the dental products industry.

The Antitrust Division's Final Action And Its Adverse Affect On Dentsply

On December 10, 1998, the Antitrust Division notified Dentsply that it had reached a final determination that Dentsply's distribution practices for its artificial teeth violate the antitrust laws of the United States. According to the Antitrust Division, unless Dentsply alters these policies and practices, Dentsply will be subject to a civil antitrust enforcement action.

The Antitrust Division's drawn-out investigation and subsequent final determination that Dentsply's distribution practices violate the antitrust laws has had a substantial, detrimental impact upon Dentsply's business. If Dentsply abandons its dealer criteria and permits its dealers to distribute competitive teeth, its ability to compete effectively will be substantially damaged. If Dentsply continues its established policies and practices with its dealers, Dentsply faces the ever-present threat of prosecution. Finally, the imminent threat of prosecution has and will continue to negatively impact Dentsply's ability to recruit additional exclusive dealers to promote, sell, and service its Trubyte product line.

First Claim For Declaratory Relief

The foregoing paragraphs of the Complaint are realleged and incorporated by reference.

Dentsply's distribution practices do not constitute agreements in restraint of trade.

Therefore, Dentsply is entitled to a declaration that its distribution practices do not violate Section 1 of the Sherman Act, 15 U.S.C. ? 1.

Second Claim For Declaratory Relief

The foregoing paragraphs of the Complaint are realleged and incorporated by reference.

Dentsply?s distribution practices do not constitute the sale of goods upon the condition, agreement or understanding that the purchaser will not deal in the goods of another.

Therefore, Dentsply is entitled to a declaration that its distribution practices do not violate Section 3 of the Clayton Act, 15 U.S.C. ? 14.

Third Claim For Declaratory Relief

The foregoing paragraphs of the Complaint are realleged and incorporated by reference.

Dentsply?s distribution practices do not constitute the willful acquisition or maintenance of monopoly power, or an attempt to monopolize a relevant market.

Therefore, Dentsply is entitled to a declaration that its distribution practices do not violate Section 2 of the Sherman Act, 15 U.S.C. ? 2.

Prayer For Relief

Therefore, Dentsply requests that the Court enter the following relief:

(a) That this Court adjudge and decree that Dentsply's distribution practices do not violate Section 1 of the Sherman Act, 15 U.S.C. § 1.

(b) That this Court adjudge and decree that Dentsply's distribution practices do not violate Section 2 of the Sherman Act, 15 U.S.C. § 2.

(c) That this Court adjudge and decree that Dentsply's business practices do not violate Section 3 of the Clayton Act, 15 U.S.C. § 14.

(d) That this Court enjoin the Antitrust Division of the United States Department of Justice from prosecuting an action against Dentsply for violation of any of the antitrust laws of the United States.

(e) That this Court grant such other and further relief as may be just and proper.

Respectfully submitted,

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