

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,)
)
Plaintiff)
)
v.)
)
P. R. MALLORY & CO. INC. and)
WELDALOY PRODUCTS COMPANY,)
)
Defendants)

Civil Action No. 34893

Filed: May 18, 1970

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 defendants named herein, and complains and alleges as follows:

I

JURISDICTION AND VENUE

1. This complaint is filed and this action is instituted against the defendants under Section 15 of the Act of Congress of October 15, 1914 (15 U.S.C. § 25), as amended, commonly known as the Clayton Act, in order to prevent and restrain the continuing violation by the defendants, as hereinafter alleged, of Section 7 of said Act.

2. Defendant Weldaloy Products Company has its principal place of business, transacts business, and is found within the Eastern District of Michigan.

3. Defendant P. R. Mallory & Co. Inc. transacts business within the Eastern District of Michigan.

II

DEFINITIONS

4. As used herein:

- (a) "Resistance welding" means that process of joining two pieces of metal by a method of passing an electrical current between them and thus fusing them. Resistance welding is performed by resistance welding machines with various attachments, such as electrodes, adapters, holders, welding wheels, and other accessories.
- (b) "Resistance welding alloy products" means attachments for resistance welding machines. Since these products come in contact with the metal under pressure, they wear out periodically and must be replaced.

III

DEFENDANTS

5. P. R. Mallory & Co. Inc. (hereinafter referred to as "Mallory") is named a defendant herein. Mallory is a corporation organized and existing under the laws of the State of Delaware and maintains its principal place of business in Indianapolis, Indiana. Mallory manufactures and sells, in interstate commerce, a wide variety of products, including batteries and battery systems, various electrical products, electronic assemblies, high density materials, powder metallurgical products, and resistance

welding alloy products. Mallory is one of the 500 largest domestic industrial corporations. In 1968, Mallory had assets of \$90 million and sales of over \$151 million. Mallory maintains a sales office and warehouse in Birmingham, Michigan.

6. Weldaloy Products Company (hereinafter referred to as "Weldaloy") is named a defendant herein. Weldaloy is a corporation organized and existing under the laws of the State of Michigan, and maintains its principal place of business in Warren, Michigan. Weldaloy manufactures and sells, in interstate commerce, a complete line of resistance welding alloy products, as well as other types of cast and forged metal products. In 1968, Weldaloy had sales in excess of \$4 million.

IV

NATURE OF TRADE AND COMMERCE

7. Resistance welding is a unique process distinguishable from other welding procedures in that two work pieces of metal are heated by the passage of an electric current through a contact, or electrode, an area is melted, and a bond is produced by a homogeneous weld of the piece metal. Where the electrode has a small diameter it creates a small area of joiner, or a "spot weld." Where moving wheel-shaped electrodes are used, a series of continuous spot welds, or a "line weld," is produced. Where wheel-shaped electrodes continuously heat the joiner of a curved piece of metal to form a pipe or tube, a "seam weld" is produced.

8. Resistance welding alloy products are manufactured and sold throughout the United States in interstate commerce. There are two principal means of distributing such products: (1) by selling standard or stock items to distributors for resale to general metal working or joining businesses; and (2) by selling directly to customers items specifically manufactured to order. The former products are sold by means of a catalogue or general price list, while the latter are usually sold at negotiated prices. All major manufacturers of resistance welding alloy products manufacture and sell both standard items and special order items.

9. There are seven major resistance welding alloy products manufacturers in the United States. There are four other companies which manufacture only some resistance welding alloy products and whose sales of these products are relatively small. In 1968, total sales in the United States of resistance welding alloy products were approximately \$10 million. Weldaloy, with 1968 sales of these products of approximately \$2.9 million, has the largest share, or about 29 percent, of the total market. Mallory, with 1968 sales of these products of approximately \$2.5 million, has the second largest share, or about 25 percent, of the total market. Combined, Mallory and Weldaloy would have approximately 54 percent of the total resistance welding alloy product market.

V

OFFENSE

10. On or about February 19, 1970, Mallory and Weldaloy entered into an Agreement and Plan of Reorganization providing for the acquisition of Weldaloy by Mallory. The Agreement was approved by the Board of Directors of Weldaloy on or about February 17, 1970, and by the Boards of Directors of Mallory on or about February 18, 1970. This Agreement was approved by the shareholders of both Weldaloy and Mallory on or about March 11, 1970.

11. The effect of this acquisition of Weldaloy by Mallory, unless restrained as requested herein, may be to substantially lessen competition or tend to create a monopoly with respect to the above described trade and commerce in violation of Section 7 of the Clayton Act, as amended, in the following ways, among others:

- (a) Competition in the manufacture and sale of resistance welding alloy products between Mallory and Weldaloy would be eliminated;
- (b) Competition generally in the resistance welding alloy products market may be substantially lessened; and
- (c) Concentration in the resistance welding alloy products market would be increased.

PRAYER

WHEREFORE, plaintiff prays:

1. That a preliminary injunction be issued against Mallory and Weldaloy preventing and restraining them from

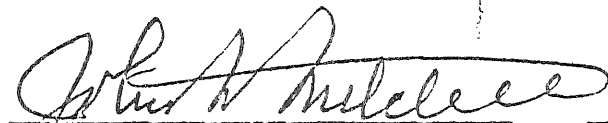
taking any further action to consummate the aforesaid plan of acquisition, or any similar plan, agreement, or understanding to transfer any of the assets, property, or stock of Weldaloy to Mallory pending final adjudication of the merits of this complaint.

2. That the aforesaid agreement between Mallory and Weldaloy be adjudged and decreed to be unlawful in violation of Section 7 of the Clayton Act.

3. That Mallory and Weldaloy and all persons acting on their behalf be restrained from carrying out the proposed acquisition, or any similar plan or agreement, the effect of which would be to transfer any of the stock, assets, or properties of Weldaloy to Mallory.

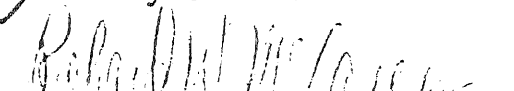
4. That plaintiff have such other and further relief that the Court may deem just and proper.

5. That plaintiff recover the costs of this action.



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