

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

FISONS LIMITED,  
FISONS PHARMACEUTICALS, LTD.,  
COLGATE-PALMOLIVE COMPANY,  
ARMOUR AND COMPANY, and  
AMERICAN HOME PRODUCTS  
CORPORATION,

Defendants.)

Civil No. 69 C 1530

Entered: February 18, 1972

FINAL JUDGMENT AGAINST DEFENDANT COLGATE-PALMOLIVE  
COMPANY

Plaintiff, United States of America, having filed its Complaint herein on July 23, 1969, and the Defendant Colgate-Palmolive Company (hereinafter Colgate) having appeared by its attorneys and having filed its answer to such Complaint denying the substantive allegations thereof; the parties hereto by their attorneys having consented to the making and entry of this Final Judgment; and this Court having determined pursuant to Rule 54(b) of the Federal Rules of Civil Procedure that there is no just reason for delay in entering a Final Judgment as to all of the Plaintiff's claims asserted in such Complaint against defendant Colgate;

NOW, THEREFORE, before the taking of any testimony, and without trial or adjudication of any issue of fact or law herein; without any admission by, or estoppel in any other action of, any party as to any such issue; and upon the consent of the United States of America and the defendant Colgate, the Court hereby determines that the proceeding herein is hereby terminated as to such defendant and directs entry of Final Judgment as to all of plaintiff's claims herein against said defendant, and as to said defendant, it is hereby

ORDERED, ADJUDGED AND DECREED AS FOLLOWS:

I.

This Court has jurisdiction of the subject matter herein and of the parties hereto. The Complaint states claims upon which relief may be granted against the defendant Colgate under Section 1 of the Act of Congress of July 2, 1890, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," as amended, commonly known as the Sherman Act (15 U.S.C. §1).

II.

As used in this Final Judgment:

A. "Person" means any individual, corporation, association, firm, partnership, or other business or legal entity;

B. "Patent" shall include patents, patent applications, and continuations, continuations-in-part, reissues, or divisions of any patent or patent application;

C. "Iron Dextran" means any colloidal ferric hydroxide complexed with depolymerized dextran, and any product in which the same is a therapeutically active ingredient;

D. "Preparation" means any product, or intermediate therefor, containing any inorganic substance administered by injection, including but not limited to iron dextran, which is intended, prepared, or available for use in the cure, medication, treatment, or the prevention of any bodily abnormality, deficiency or disease caused by an insufficiency of such inorganic substance;

E. "United States" means the United States, any territory or possession thereof, the District of Columbia, the Commonwealth of Puerto Rico and any other place under the jurisdiction of the United States;

F. "Technical Assistance" shall include descriptions in writing of manufacturing, processing, and packaging information, and copies of all then current manuals, blueprints, drawings, specifications and instructions relating to machines, devices, or processes;

G. "Dosage Form" means capsules, tablets, ampules, vials and other forms of packaging pharmaceutical products for administration to the customer or ultimate recipient thereof;

H. "Bulk Form" means any form of chemical product prepared for pharmaceutical use, prior to its being packaged into dosage form;

I. "Ethical Sale" means the marketing, distribution or sale of products by prescription for human use or through licensed veterinarians for animal use;

J. "Proprietary Sale" means the marketing, distribution, or sale of products other than by ethical sale;

K. "Animal Use" means the use of products for animals;

L. "Human Use" means the use of products for humans.

### III.

The provisions of this Final Judgment applicable to defendant Colgate shall also apply to each of its officers, directors, agents and employees, its subsidiaries, successors and assigns, and to all other persons in active concert or participation with any of them who shall have received actual notice of this Final Judgment by personal service or otherwise. Except for sales to the plaintiff or to any agency or instrumentality thereof, wherever located, this Final Judgment shall not apply to activities of defendant Colgate outside the United States which do not substantially affect the foreign or domestic commerce of the United States.

### IV.

Defendant Colgate is enjoined and restrained from directly or indirectly in any manner entering into, adhering to, or enforcing any contract, agreement, arrangement, understanding, or plan:

A. Pursuant to which any party thereto undertakes not to resell any preparation, or is in any way limited, prohibited or restrained in the use, manner or form in which, or the persons to whom, it resells in or for the United States, any preparation.

B. Relating to any preparation, pursuant to which any party thereto undertakes not to contest the registration or validity of any trademark or the exclusive right of the registered owner or assignee to use any trademark.

C. Pursuant to which any party thereto is in any way limited, restrained, or prohibited from selling any preparation under a trademark other than a specified trademark.

D. In connection with any license, agreement, or understanding relating to any United States patent which claims any preparation or any process or device for making, selling or using any preparation:

- (1) Pursuant to which any party thereto is in any way limited, restrained, or prohibited from making, using or selling any such preparation in bulk or dosage form, or for proprietary or ethical sale, or for animal or human use.
- (2) To assign to any grantor or licensor under any such patent any trademark owned or registered by the licensee or grantee on or in connection with the sale or distribution of any such preparation.
- (3) Pursuant to which any party thereto is in any way limited, restrained, or prohibited from licensing such United States patent; but, subject to the provisions of Section VI D hereof, nothing contained

in this Final Judgment shall prevent the granting or acceptance of a non-exclusive license with or without sublicensing rights, or the granting or acceptance of an exclusive license with sublicensing rights.

E. In connection with any agreement or understanding relating to any United States patent which claims iron dextran or any process or device for making, selling, or using iron dextran, pursuant to which any party thereto is in any way limited, restrained, or prohibited from making, using, or selling iron dextran for all uses thereof.

V.

Defendant Colgate is ordered and directed to:

A. Grant to each bona fide applicant therefor, including any other defendant named in the complaint herein, a non-exclusive license to make, have made, use, and sell iron dextran under any, some or all, as the applicant may from time to time specify, United States patent or patents which are owned or controlled by defendant Colgate (or under which such defendant has the power to grant a license), on the date of the entry of this Final Judgment or within five years from the date of this Final Judgment, or which issue thereafter on the basis of applications filed prior to the expiration of such five-year period, which patents claim or relate to iron dextran or to

inventions used in the making, processing, using or selling of iron dextran; in granting any sublicense hereunder, defendant Colgate shall not require any of its licensees to pay a royalty higher than the royalty defendant Colgate pays to its licensor on such subject matter.

B. Take, for each patent issued on or before the date of entry of this Final Judgment, which is required to be licensed hereunder, within thirty days after such date, all appropriate action to secure the publication in the Official Gazette of the United States Patent Office, of notice that such patent, is, in accordance with this Final Judgment, available for licensing at reasonable royalties, and for each patent issued after the date of entry of this Final Judgment, which is required to be licensed hereunder, to take such action within thirty days after the date of issuance of such patent, and for each such patent whenever issued, to file with the Assistant Attorney General in charge of the Antitrust Division a copy of such publication.

C. Furnish, to the extent defendant Colgate has the power to do so, to each applicant therefor under Paragraph A of this Section, including any other defendant named in the complaint herein, technical assistance and information, including data relevant to or required for any application

to the Food and Drug Administration, disclosing any, some, or all, as the applicant may specify, of the commercial practices and technical information used by defendant Colgate relating to the manufacture, processing or using of iron dextran or which is useable in the manufacture, processing or using of iron dextran; provided, however, that such technical assistance and information may be limited to that reasonably necessary to the making, processing, using, or selling of the subject matter (or the product thereof, in the case of a process patent or claim) of any license granted under Paragraph A of this Section.

D. Sell iron dextran to any United States applicant therefor, on nondiscriminatory prices, terms, and conditions, during the period of five years from the date of the entry of this Final Judgment and while defendant Colgate is selling iron dextran; provided, however, that discounts otherwise lawful under the antitrust laws shall not constitute a violation of this paragraph.

## VI.

A. Upon receipt of a written application under Section V-A or V-C herein, the defendant Colgate shall



advise the applicant in writing and within 30 days of such receipt, of the royalty or compensation which it deems reasonable for a license under the patent or patents, or for the technical assistance and information, to which the application pertains. If the defendant and applicant are unable to agree upon the reasonable royalty or compensation, either may, after 60 days from the date such applicant communicates its rejection of the royalty or compensation requested by defendant Colgate, upon notice to the Plaintiff, forthwith apply to this Court for the determination of any, some or all of (1) reasonable royalty or compensation, and (2) such reasonable interim royalty or compensation (pending the completion of any such proceeding), as the Court may deem appropriate. In any such proceeding, the burden of proof shall be on such defendant to

establish the reasonableness of the royalty or compensation requested by it. Pending the completion of negotiations or any such proceedings, the applicant shall have the right to make, have made, use, and sell under the patents to which his application pertains, subject to the payment of the reasonable interim royalties fixed by the Court. A final Court determination of a reasonable royalty shall be applicable to the applicant from the date upon which the applicant made his application, and, after such a final determination of reasonable royalty or compensation, respectively, be applicable to such applicant and unless otherwise ordered by this Court in such proceeding or in any other proceeding instituted under this Section, be applicable to any other applicant then having or thereafter obtaining the same rights under the same patent or patents, or technical assistance and information. Any such license shall be at any time terminable at the option of the licensee but this provision shall not affect whatever obligations he may have to pay royalty or compensation accrued before termination.

B. Defendant Colgate is hereby enjoined and restrained, in complying with Section V-A or V-C hereof, from including in, or imposing, in connection with any patent license or the furnishing of technical assistance or information, any restriction or condition, except that nothing contained herein, however, shall prohibit:

- (1) a nondiscriminatory and reasonable royalty or compensation,
- (2) reasonable provisions for nondisclosure to others of the technical assistance and information, furnished by the defendant,
- (3) reasonable provisions for patent markings,
- (4) reasonable provisions for periodic inspection of the books and records of a patent licensee or recipient of technical assistance or information, by an independent auditor or other person acceptable to the parties, who shall report to the defendant only the amounts of royalty or compensation due or payable (or other reasonable provisions for the applicant to make periodic reports of such amounts), or
- (5) reasonable provisions for the cancellation or termination of the use of and for the return of any transcribed furnished technical assistance or information, upon failure of the licensee or recipient to pay royalties or compensation, or to make required reports or permit required inspection of books as hereinabove provided.

C. Nothing herein shall prevent any applicant or licensee under Section V herein, from attacking in any proceeding thereunder or in any other proceeding or controversy, the validity, scope, or enforceability of any patent required to be licensed hereunder, nor shall this Final Judgment be construed as imputing any validity, enforceability, scope or value to any such patent.

D. Defendant Colgate is hereby enjoined and restrained from taking or accepting any license or right or accepting any technical assistance or information upon any term or condition or with any restriction which would prevent or limit it from complying with any of the provisions of this Final Judgment, or with its power or control to do so; and from making any sale or other disposition of any patent, right, or license, or any sale or other disposition of technical assistance or information, which limits, restricts or deprives it of the power or control to comply with such provisions of this Final Judgment, unless the purchaser, transferee or assignee shall file with this Court, prior to the consummation of such a sale or other disposition, an undertaking to be bound by and to comply with such provisions of this Final Judgment.

VII.

For the purpose of determining or securing compliance with this Final Judgment, and for no other purpose:

A. Any duly authorized representative or representatives of the Department of Justice shall, upon written request of the Attorney General, or of the Assistant Attorney General in charge of the Antitrust Division, upon reasonable notice to defendant Colgate made to such defendant's principal office, be permitted, subject to any legally recognized privilege:

- (1) Access during the office hours of such defendant to books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession, custody or under the control of such defendant as relate to any matters contained in this Final Judgment;
- (2) Subject to the reasonable convenience of such defendant and without restraint or interference from it, to interview officers or employees of defendant, who may have counsel present, regarding any such matter.

B. Defendant Colgate on the written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division, shall submit such written reports, under oath if requested, with respect to any matters contained in this Final Judgment as may from time to time be requested.

C. No such information obtained by the means provided for in this Section VII shall be divulged by any representative of the Department of Justice to any person other than duly authorized representatives of the Executive Branch of the United States of America except in the course of legal proceedings to which the United States of America is a party for the purpose of securing compliance with this Final Judgment or as otherwise required by law.

#### VIII.

Jurisdiction is retained by this Court for the purpose of enabling any party to this Final Judgment to apply to the Court at any time for such further orders or directions as may be necessary or appropriate for the construction of or carrying out of this Final Judgment, or for the amendment or modification of any of the provisions contained herein, and for the purpose of compliance therewith and the punishment of violations thereof.

/s/ JOSEPH SAM PERRY  
United States District Judge

Dated: February 18, 1972