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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	Civil No. C-73-0300 CBR
)	
SWIFT INSTRUMENTS, INC.,)	<u>Filed: November 6, 1973</u>
)	
Defendant.)	<u>Entered: December 11, 1973</u>

FINAL JUDGMENT

Plaintiff, UNITED STATES OF AMERICA, having filed its complaint herein on February 26, 1973; defendant, SWIFT INSTRUMENTS, INC., having appeared by its counsel; and plaintiff and defendant, by their respective attorneys, each having consented to the entry of this Final Judgment, without trial or adjudication of any issue of fact or law herein, and without this Final Judgment constituting evidence or an admission by any party consenting hereto with respect to any such issue,

NOW, THEREFORE, before any testimony or evidence has been taken herein, and without trial or adjudication of any issue of fact or law herein, and upon the consent of the parties hereto,

1 (A) Fix, establish, maintain or adhere to prices or
2 discounts at which microscopes are bid, sold, offered for
3 sale, or advertised by any such dealer; and

4 (B) Limit or restrict the sales territories within
5 which, or the persons to whom dealers may bid, sell, offer
6 for sale or advertise microscopes.

7 V

8 Swift is enjoined and restrained from:

9 (A) Suggesting, urging, compelling or requiring any
10 dealer to establish, maintain, adopt, advertise or adhere to
11 any fixed, suggested or specified price, discount, markup
12 or margin of profit in the sale of microscopes;

13 (B) Encouraging the report of, or taking action in
14 response to any complaint by dealers regarding bidding or
15 selling at discounted prices in connection with the sale
16 of Swift microscopes by any other dealer;

17 (C) Suggesting, urging, compelling or requiring any
18 dealer to establish, maintain, adopt, adhere to or enforce
19 adherence to any limit on the classes of customers to whom,
20 or the territory in which, such dealer may bid, sell, offer
21 to sell or advertise microscopes;

22 (D) Suggesting, urging, compelling or requiring any
23 dealer to modify or withdraw its bid to any educational
24 institution or other public agency because of the price or
25 discount at which said dealer bid microscopes;

26 (E) Terminating or threatening to terminate the dealer
27 sales agreement of any dealer because of the prices at which,
28 the persons or classes of persons to whom, or the markets or
29 territories in which such dealer has bid, sold or offered
30 to sell Swift microscopes; and

31 (F) Discontinuing, curtailing or limiting the sale of
32 microscopes to, or otherwise penalizing any dealer because

1 of the prices at which, the persons, or classes of persons
2 to whom, or the markets or territories in which such dealer
3 has bid, sold or offered to sell Swift microscopes.

4 VI

5 (A) Nothing in this Final Judgment shall prohibit Swift
6 from unilaterally suggesting retail prices, markups or
7 margin of profit to dealers for the sale of microscopes;
8 provided, however, that the page (or the first page of a
9 multipage document) containing such a suggestion shall include
10 a statement that each dealer is free to sell at whatever
11 prices, markups or margins of profit he may choose.

12 (B) Nothing in this Final Judgment shall be deemed to
13 prohibit Swift from availing itself of rights it may have
14 under the Miller-Tydings Act and the McGuire Act.

15 VII

16 (A) Swift is ordered and directed, within ninety (90)
17 days after the date of entry of this Final Judgment, to
18 revise any portion of its contracts and agreements with
19 dealers which are inconsistent with any provision of this
20 Final Judgment.

21 (B) Swift is ordered and directed, within ninety (90)
22 days after entry of this Final Judgment, to notify each such
23 dealer in writing, in a form acceptable to plaintiff, that he
24 may sell Swift products at such prices as, and to whomever
25 and wherever he may please.

26 (C) Swift is ordered and directed, for a period of ten
27 (10) years after entry of this Final Judgment, to deliver to
28 each new dealer with whom Swift commences business relations
29 a notice in writing in the same form as that approved for use
30 pursuant to subsection VII(B) above within thirty (30) days
31 after commencing such business relations.

32 (D) Swift is ordered and directed, within ninety (90)

1 days after the entry of this Final Judgment, to serve a copy
2 of this Final Judgment upon each of Swift's officers,
3 directors and each of its employees or representatives who
4 has responsibility for the sale of Swift products, and to
5 advise each such person that violation by him of this Final
6 Judgment could result in a conviction for contempt of court
7 and could subject him to imprisonment and/or fine.

8 (E) Swift is ordered and directed, for a period of ten
9 (10) years after entry of this Final Judgment, to serve a
10 copy of this Final Judgment upon each successor to those
11 officers, directors and supervisory employees of Swift
12 described in subsection (D) of this section VII, within
13 thirty (30) days after each successor is employed by or
14 becomes associated with Swift.

15 (F) Swift is ordered and directed, within one hundred
16 and twenty (120) days after the entry of this Final Judgment
17 to serve upon plaintiff affidavits concerning the fact and
18 manner of compliance with subsections (B) and (D) of this
19 section VII.

20 VIII

21 For a period of ten (10) years from the date of the
22 entry of this Final Judgment, Swift is ordered to file with
23 the plaintiff, on each anniversary date of such entry, a
24 report setting forth the steps which Swift has taken during
25 the prior year to advise Swift's appropriate officers,
26 directors and employees of their obligations under this Final
27 Judgment. Such report shall further contain the name and
28 address of any dealer whose dealership was terminated by
29 Swift and state the reasons for such termination.

30 IX

31 For the purpose of determining or securing compliance
32 with this Final Judgment, authorized representatives of the

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Department of Justice, upon written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, subject to reasonable notice to Swift and applicable legal privilege, shall be permitted:

(A) To examine the books, ledgers, accounts, correspondence, memoranda and other records in the possession or under the control of Swift relating to matters in this Final Judgment; and

(B) Subject to the reasonable convenience of Swift, and without restraint or interference from it, to interview its officers and employees, who may have counsel present, regarding such matters.

Upon such written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, Swift shall submit written reports relating to matters in this Final Judgment as may from time to time be requested.

No information obtained pursuant to this paragraph IX shall be divulged by any representative of the Department of Justice to any person other than another authorized representative of the Executive Branch, except in the course of legal proceedings to secure compliance with this Final Judgment, or as otherwise required by law.

X

Jurisdiction is retained for the purpose of enabling each 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, carrying

1 out or modification of provisions thereof, and for the
2 enforcement of compliance therewith and for the punishment
3 of violations thereof.

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5 Dated: December 11, 1973
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10 /s/ ALBERT C. WOLLENBERG
11 United States District Judge
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