

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
WESTERN DIVISION

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	Civil No. 94 C 50249
)	
S.C. JOHNSON & SON, INC. and)	Filed:
BAYER A.G.,)	
)	Entered: November 8, 1994
Defendants.)	

FINAL JUDGMENT

Plaintiff, the United States of America, having filed its Complaint on August 4, 1994, and plaintiff and defendants, S.C. Johnson & Son, Inc. and Bayer A.G., by their respective attorneys, having consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law, and without this Final Judgment constituting evidence against or admission by any party with respect to any issue of fact or law;

Now, therefore, before the taking of any testimony and without trial or adjudication of any issue of fact or law, it is hereby ORDERED, ADJUDGED AND DECREED:

I.

JURISDICTION

This Court has jurisdiction of the subject matter and each of the parties to this action. The Complaint states a claim upon which relief may be granted against S.C. Johnson & Son, Inc. and Bayer A.G. under Section 1 of the Sherman Act, as amended, 15 U.S.C. § 1.

II.

DEFINITIONS

As used in this Final Judgment:

(A) "Active ingredient" means any chemical compound or substance used or contemplated for use in the United States as a knock-down, debilitating, or killing agent in a household insecticide, regardless of whether that compound or substance has been approved by federal or state regulatory authorities.

(B) "Exclusive license" means any agreement for the license or supply of an active ingredient that directly or indirectly, implicitly or explicitly, limits access to S.C. Johnson & Son, Inc. or to S.C. Johnson & Son, Inc. and the licensor.

III.

APPLICABILITY

This Final Judgment applies to S.C. Johnson & Son, Inc.'s and to Bayer A.G.'s officers, directors, subsidiaries, agents, employees, successors and assigns, and to all other persons in active concert or participation with any of them who receive actual notice of this Final Judgment pursuant to F.R.C.P. 65(d).

IV.

INJUNCTIVE RELIEF

(A) S.C. Johnson & Son, Inc. and Bayer A.G. are each enjoined and restrained from entering into or carrying out any agreement or understanding, the purpose or effect of which would be to allocate or divide territories or markets for the distribution or sale of household insecticides, unless any such

agreement or understanding relates exclusively to markets other than the United States and has no effect on United States commerce.

(B) S.C. Johnson & Son, Inc. and Bayer A.G. are each enjoined and restrained from entering into any exclusive license between them for any active ingredient, the patent rights to which are beneficially owned by Bayer A.G., if such license has been disapproved by the U.S. Department of Justice as provided herein.

S.C. Johnson & Son, Inc. and Bayer A.G. each must provide the U.S. Department of Justice at least 90 days' written notice of their intent to enter into any exclusive license between them. If requested by the Department of Justice within 30 days after its receipt of such notice, S.C. Johnson & Son, Inc. and Bayer A.G. must supply, within 30 days of such request, all information in their possession reasonably necessary to enable the Department to determine the competitive effect of their exclusive license. The Department must exercise its unconditional right to disapprove an exclusive license between S.C. Johnson & Co., Inc. and Bayer A.G. by so notifying them in writing within 90 days after receiving defendants' notice of intent.

(C) S.C. Johnson & Son, Inc. and Bayer A.G. are each enjoined and restrained from entering into, carrying out, or operating under any exclusive license to make, use or sell Cyfluthrin in the United States. Bayer A.G. must offer, to any person who requests it, a license to use or sell Cyfluthrin in

the United States, upon reasonable and mutually agreeable terms and conditions, but no minimum royalty payment shall be required under such license. Nothing herein, however, shall prohibit Bayer A.G. from reserving exclusively for itself Cyfluthrin or any other active ingredient, or from discontinuing the manufacture, sale or use in the United States of Cyfluthrin or any other active ingredient.

(D) No more than 180 days and not less than 90 days before entering into any exclusive license with any person other than Bayer A.G., for any active ingredient other than Cyfluthrin, S.C. Johnson & Son, Inc. must provide the U.S. Department of Justice written notice of such license agreement. If requested by the Department of Justice within 30 days after its receipt of such notice, S.C. Johnson & Son, Inc. must supply within 30 days after such request, all information in its possession reasonably necessary to determine the competitive effect of such license agreement.

V.

COMPLIANCE PROGRAM: S.C. JOHNSON & SON, INC.

S.C. Johnson & Son, Inc. shall maintain an antitrust compliance program, which shall include:

- (A) distributing within 60 days from the entry of this Final Judgment, a copy of the Final Judgment and Competitive Impact Statement to all officers with responsibility for research and development,

manufacturing, sales or marketing of household insecticides in the United States;

- (B) distributing in a timely manner a copy of the Final Judgment and Competitive Impact Statement to any person who succeeds to a position described in Paragraph V(A);
- (C) briefing annually those persons designated in Paragraph V(A) and (B) on the meaning and requirements of this Final Judgment and the antitrust laws, including potential antitrust concerns raised by patent licensing agreements;
- (D) obtaining from each person designated in Paragraph V(A) and (B) an annual written certification that he or she:
 - (1) has read, understands and agrees to abide by this Final Judgment;
 - (2) has been advised and understands that noncompliance with this Final Judgment may result in his or her conviction for criminal contempt of court and/or fine; and
 - (3) is not aware of any violation of this Final Judgment; and
- (E) maintaining for inspection by plaintiff a record of recipients to whom this Final Judgment and Competitive Impact Statement have been distributed and from whom the certification required by Paragraph V(D) has been obtained.

VI.

COMPLIANCE PROGRAM: BAYER A.G.

Bayer A.G. shall maintain an antitrust compliance program, which shall include:

- (A) distributing within 60 days from the entry of this Final Judgment, a copy of the Final Judgment and Competitive Impact Statement to all officers, directors, and employees of Bayer A.G.'s household insecticide unit having signing authority on behalf of Bayer A.G.;
- (B) distributing in a timely manner a copy of the Final Judgment and Competitive Impact Statement to any person who succeeds to a position described in Paragraph VI(A);
- (C) briefing those persons designated in Paragraph VI(A) and (B) on the meaning and requirements of this Final Judgment and the antitrust laws, including potential antitrust concerns raised by patent licensing agreements;
- (D) obtaining from each person designated in Paragraph VI(A) and (B) an annual written certification that he or she:
(1) has read, understands and agrees to abide by this Final Judgment; (2) has been advised and understands that noncompliance with this Final Judgment may result in his or her conviction for criminal contempt of court and/or fine; and (3) is not aware of any violation of this Final Judgment; and

(E) maintaining for inspection by plaintiff a record of recipients to whom this Final Judgment and Competitive Impact Statement have been distributed and from whom the certification required by Paragraph VI(D) has been obtained.

VII.

CERTIFICATIONS

(A) Within 75 days after the entry of this Final Judgment, S.C. Johnson & Son, Inc. and Bayer A.G. each shall certify to plaintiff whether it has made the distribution of this Final Judgment in accordance with Paragraphs V(A) and VI(A), respectively.

(B) For ten years after the entry of this Final Judgment, on or before its anniversary date, S.C. Johnson & Son, Inc. and Bayer A.G. shall each certify annually to plaintiff whether it has complied with the provisions of Paragraphs V and VI, respectively.

VIII.

PLAINTIFF'S ACCESS

For the sole purpose of determining or securing compliance with this Final Judgment, and subject to any legally recognized privilege, authorized representatives of the U.S. Department of Justice, upon written request of the Assistant Attorney General in charge of the Antitrust Division shall on reasonable notice be permitted:

- (A) access during regular business hours of S.C. Johnson & Son, Inc. and Bayer A.G. to inspect and copy all records and documents relating to any matters contained in this Final Judgment;
- (B) to interview S.C. Johnson & Son, Inc. and Bayer A.G. officers, directors, and employees, who may have counsel present, concerning such matters; and
- (C) to obtain written reports from S.C. Johnson & Son, Inc. and Bayer A.G. relating to any of the matters contained in the Final Judgment.

Information provided to the Department of Justice pursuant to this provision or pursuant to Paragraph IV(B) or (D) of the Final Judgment must be kept confidential to the full extent permitted by law.

IX.

JURISDICTION RETAINED

Jurisdiction is retained by this Court for the purpose of enabling any of the parties to this Final Judgment to apply to this Court at any time for further orders and directions as may be necessary or appropriate to carry out or construe this Final Judgment, to modify or terminate any of its provisions, to enforce compliance, and to punish violations of its provisions.

X.

EXPIRATION OF FINAL JUDGMENT

This Final Judgment shall expire 10 years from the date of its entry. Paragraph IV(D) of this Final Judgment, however, shall expire six years from the date of its entry.

XI.

PUBLIC INTEREST DETERMINATION

Entry of this Final Judgment is in the public interest.

Dated:


United States District Judge