

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
WESTERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

S.C. JOHNSON & SON, INC. and
BAYER A.G.,

Defendants.

Civil No. 94 C 50249

Filed: 8/4/94

COMPLAINT

The United States of America, acting under the direction of the Attorney General of the United States, brings this civil action to obtain equitable and other relief against the defendants named herein, and complains and alleges as follows:

I.

JURISDICTION, VENUE, AND DEFENDANTS

1. This complaint is filed under Section 4 of the Sherman Act, 15 U.S.C. § 4, in order to prevent and restrain violations, as hereinafter alleged, by defendants of Section 1 of the Sherman Act, 15 U.S.C. § 1.

2. Bayer A.G. ("Bayer"), a German corporation with its principal place of business at 5090 1Leverkusen-Bayerwerk, Germany, is made a defendant. Bayer wholly owns and closely controls Miles, Inc., an Indiana corporation that maintains an established place of business at 7123 West 65th Street, Chicago, Illinois in the Northern District of Illinois. Bayer, through

its subsidiary, Miles, Inc., is found and transacts business in the Northern District of Illinois. Venue as to Bayer is proper under 15 U.S.C. § 22 and 28 U.S.C. § 1391 (c).

3. S.C. Johnson & Son, Inc. ("Johnson"), a Wisconsin corporation with its principal place of business at 1525 House Street, Racine, Wisconsin, is made a defendant. Johnson is found and transacts business in the Northern District of Illinois. Venue as to Johnson is proper under 15 U.S.C. § 22 and 28 U.S.C. § 1391 (c).

II.

TRADE AND COMMERCE

4. Defendant Bayer and its subsidiaries receive large amounts of money in the form of payments from manufacturers for the sale of active ingredients for use in household insecticides in the United States, and defendant Johnson and its subsidiaries receive large amounts of money from the sale of household insecticides to retailers and consumers throughout the United States. Defendants' business activities and operations, as hereinafter described, involve or affect the interstate and international flow of funds and are within the flow of, and have a substantial effect upon, interstate and foreign commerce.

III.

BACKGROUND

5. Household insecticides are chemical products that are sold in a wide variety of forms (e.g., aerosols, baits, powders, and traps) for use by consumers to trap or kill ants, roaches,

crickets, and other undesirable insects that invade and infest houses, apartments and other dwellings. Because of their low cost, superior efficacy, and ease of use, there are no good substitutes for household insecticides, and thus they constitute a relevant product market.

6. The relevant geographic market for the sale of household insecticides is the United States. Annual retail sales of household insecticides in the United States exceeded \$450 million in 1993.

7. The United States market for household insecticides is highly concentrated. Johnson is the largest manufacturer of household insecticides in the United States, with total sales between 45-60% of the market. Johnson's two next-largest competitors in the sale of household insecticides each have sales of no more than 12% of the market, and the shares of Johnson's three other major competitors range from 6 to 10% of the market.

8. Successful new entry into or expansion within the United States market for household insecticides is difficult. To be successful, a new entrant must demonstrate that its household insecticide has superior safety and efficacy, attributes that are solely dependent upon the active ingredient chosen for use in the product. Active ingredients must comply with state and federal government regulations for safety and efficacy prior to sale in the United States. Compliance with such laws and regulations is an expensive and time-consuming process that often takes more than three years and costs over \$10 million to complete.

9. Bayer is one of a small number of firms in the world that engage in research and development of active ingredients for household insecticides. Bayer has numerous patents in countries around the world, including United States patents, on such active ingredients. Bayer makes and sells, or licenses others to make and sell, such active ingredients in various countries, including the United States.

10. Bayer, which makes and sells household insecticides in many countries outside the United States, is one of the few significant potential entrants into the United States household insecticides market. Bayer earlier had planned and made preparations to enter the United States household insecticides market with a new product, called Laser. Laser's chief active ingredient was Cyfluthrin, developed and patented by Bayer and widely considered to be superior to other active ingredients because of its long-lasting killing power. Through Laser, Bayer could have become one of Johnson's major competitors in the household insecticides market in the United States.

IV.

VIOLATION ALLEGED

11. Beginning at least as early as March 1988 and continuing to the present, Johnson and Bayer entered into an agreement to unreasonably restrain trade and commerce and lessen competition in the manufacture and sale of household insecticides in the United States in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1.

12. For the purpose of forming and effectuating this agreement, defendants did the following things, among others:

- (a) Bayer licensed Johnson to use Clyfluthrin in household insecticides in the United States, and granted Johnson a right of first refusal for exclusive rights for the United States on future active ingredients developed by Bayer for household insecticides;
- (b) Bayer refrained from licensing Johnson's competitors to use or sell Cyfluthrin; and
- (c) Bayer ended its plans to market Laser and compete with Johnson in the United States household insecticides market.

V.

COMPETITIVE EFFECTS

13. Defendants' agreement and activities have had the following direct, substantial, and reasonably foreseeable effects, among others:

- (a) Incentives for Bayer to compete with Johnson in the manufacture and sale of household insecticides in the United States have been substantially reduced; and
- (b) Competition generally in the market for the sale of household insecticides in the United States has been unnecessarily and unreasonably restrained.

VI.

PRAYER FOR RELIEF

WHEREFORE, plaintiff prays:

1. That Johnson and Bayer be enjoined and restrained from entering into any agreement or understanding the purpose or effect of which is to allocate or divide territories or markets for the sale of household insecticides;

2. That Johnson and Bayer be enjoined from entering into any exclusive license for an active ingredient patented by Bayer without plaintiff's prior approval;


3. That Johnson and Bayer be enjoined from entering into or carrying out any exclusive license to make, use or sell Cyfluthrin in the United States without plaintiff's prior approval;

4. That Johnson be enjoined and restrained from obtaining from anyone an exclusive license for any active ingredient for use in any household insecticide without prior notice (and if necessary, provision of additional information regarding the arrangement) to plaintiff;

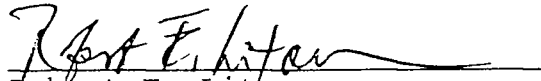
5. That plaintiff have such other relief as may be just and proper; and

6. That plaintiff be awarded its costs in this action.

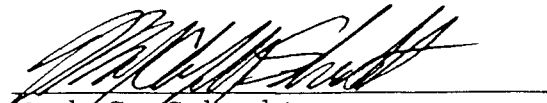
Dated: August 3, 1994.


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