

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA

Plaintiff

v.

CHELSEA INDUSTRIES, INC.; and
AVON TAPE INC.

Defendants.

Civil Action No.
78-3224-C

Filed: November 30, 1979

Entered: March 5, 1980

FINAL JUDGMENT

Plaintiff, United States of America, having filed its Complaint herein on December 14, 1978, and plaintiff and defendants by their respective attorneys having each 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 against or admission by any party hereto with respect to any issue of fact or law herein:

NOW, THEREFORE, before the taking of any testimony and without trial or adjudication of any issue of fact or law herein, and upon consent of the parties hereto, it is hereby

ORDERED, ADJUDGED and DECREED as follows:

I

This Court has jurisdiction over the subject matter of this action and of the parties hereto. The Complaint states a claim upon which relief may be granted against the defendants under Section 1 of the Sherman Act (15 U.S.C. §1).

II

As used in this Final Judgment:

A. "Pressure Sensitive Tape Products" means tape of various sizes, widths and compositions with adhesive qualities

which is manufactured and sold to the shoe industry. Pressure sensitive tape products within this definition include, but are not limited to, tapes with the following compositions or descriptions: nylon; cotton; nylon/cotton; paper and foam.

B. "Shoe Industry" means domestic manufacturers of shoes, distributors or other persons that purchase pressure sensitive tape products from the defendants for use in shoes manufactured in the United States.

III

The provisions of this Final Judgment shall apply to each of the defendants and to each of their domestic subsidiaries, successors and assigns and their officers, directors, agents and employees, 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; provided, however, that this Final Judgment shall not apply to transactions or activities solely between a defendant and its directors, officers, or employees.

IV

Each defendant is enjoined and restrained from directly or indirectly entering into, adhering to, maintaining, enforcing or claiming any rights under any contract, agreement, understanding, plan, program, combination or conspiracy with any other manufacturer of pressure sensitive tape products or other person to:

A. fix, maintain or stabilize the price, discount, markup, or any other term or condition of sale for pressure sensitive tape products; or

B. furnish or request from any other manufacturer of pressure sensitive tape products any information concerning

any price, discount, markup, specific account, or any other term or condition of sale for pressure sensitive tape products.

V

Each defendant is enjoined and restrained from:

A. proposing, requiring, coercing or attempting to require or coerce any other manufacturer of pressure sensitive tape products or any other person to adopt, establish or adhere to any price, discount, markup, or other term or condition of sale for pressure sensitive tape products;

B. communicating or exchanging with, or requesting from any other manufacturer of pressure sensitive tape products any information concerning:

(1) any past or present sale price, discount, markup or any other term or condition of sale for pressure sensitive tape products;

(2) any future price, discount, markup, or any other term or condition of sale for pressure sensitive tape products; or

(3) any price or discount announcement, list, schedule or book, or any revision or modification thereto.

VI

Nothing contained in Section V (B) of this Final Judgment shall prohibit defendants from negotiating or entering into any bona fide contract, agreement or understanding to purchase, sell or furnish pressure sensitive tape products to another manufacturer of pressure sensitive tape products.

VII

Each defendant is ordered and directed to take the affirmative steps enumerated below to ensure compliance with each provision of this Final Judgment:

A. Each defendant shall provide a copy of this Final Judgment to each of its officers and employees who sell, have responsibility for or authority over the sale of pressure sensitive tape products, or the establishment of prices therefor, and shall advise each such officer and employee of his or her obligations under this Final Judgment and of the criminal penalties for violation of this Final Judgment. Each officer or employee who receives a copy of this Final Judgment shall execute a written receipt therefor, which shall be retained by each defendant in its corporate files;

B. Each defendant shall review with its officers and employees described in subsection A., the terms of this Final Judgment and the requirement to comply therewith, at least once each year for five (5) years after the entry of this Final Judgment;

C. Each defendant shall within sixty (60) days following the entry of this Final Judgment:

(1) independently review its prices, discounts and terms and conditions of sale for pressure sensitive tape products on the basis of its individual cost figures, individual judgment as to profits, and other lawful considerations;

(2) adopt and publish domestic prices, discounts and terms and conditions of sale for pressure sensitive tape products on the basis of such independent review; and

(3) submit an affidavit to the Court and plaintiff certifying that such new prices, discounts and terms and conditions of sale were arrived at individually and independently;

D. Each defendant shall for a period of five (5) years certify by affidavit by an officer with responsibility for or authority over the establishment of prices for pressure sensitive tape products, at or about the time of every succeeding change in its published prices, discounts or terms and conditions of sale for pressure sensitive tape products, that such change was arrived at individually and independently and was not the result of any agreement or understanding with any other manufacturer of pressure sensitive tape products. Each affidavit executed to comply with the provisions of this subsection (D) shall be filed in accordance with and as part of the compliance requirements of Section VIII of this Final Judgment. A copy of each affidavit shall be retained by each defendant in its corporate files;

E. Each defendant shall submit an affidavit to the plaintiff within sixty (60) days after the entry date of this Final Judgment setting forth the manner in which it has complied with this Section.

VIII

For a period of five (5) years from the date of entry of the Final Judgment, each defendant is ordered to file with this Court and the plaintiff on each anniversary date of this Final Judgment, a written statement signed by an officer, setting forth the steps it has taken during the prior year to comply with Section VII of this Final Judgment.

IX

A. For the purpose of determining or securing compliance with this Final Judgment, any duly authorized representative of the Department of Justice shall, upon written request of the Attorney General or the Assistant Attorney General in

charge of the Antitrust Division, and on reasonable notice to any defendant made to its principal office, be permitted, subject to any legally recognized privilege:

1. Access during the office hours of such defendant to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of such defendant relating to any matters contained in this Final Judgment; and

2. Subject to the reasonable convenience of such defendant and without restraint or interference from it, to interview officers, directors, agents, partners, or employees of such defendant, who may have counsel present, regarding any such matters.

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

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

If at any time information or documents are furnished by a defendant to plaintiff pursuant to this Section, such defendant represents and identifies in writing the material

in any such information or documents of a type described in Rule 26 (c) (7) of the Federal Rules of Civil Procedure, and said defendant marks each pertinent page of such material, "Subject to claim of protection under Rule 26 (c) (7) of the Federal Rules of Civil Procedure," then ten (10) days notice shall be given by plaintiff to such defendant prior to divulging such material in any legal proceeding (other than a Grand Jury proceeding) to which the defendant is not a party.

X

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 such further orders and directions as may be necessary or appropriate for the construction or carrying out of any of the provisions herein, for the modification of any of the provisions contained herein, for the enforcement of compliance therewith and for the punishment of violations thereof.

XI

Entry of this Final Judgment is in the public interest. This Final Judgment shall be effective for a period of ten (10) years from its date of entry.

DATED: March 5, 1980

/s/ Andrew A. Caffrey
Andrew A. Caffrey, Chief Judge
United States District Court