

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA,)
)
Plaintiff,) Filed 9/26/96
)
v.) Civil Action No.
) CV96-6515
IXTLERA DE SANTA CATARINA,)
S.A. DE C.V.; and)
MFC CORPORATION,)
)
Defendants.)

FINAL JUDGMENT

Plaintiff, the United States of America, filed its complaint on September 26, 1996.

Plaintiff and defendants, by their respective attorneys, have consented to the entry of this final judgment without trial or adjudication of any issue of fact or law. This final judgment shall not be evidence against or an admission by any party to any issue of fact or law. Defendants have agreed to be bound by the provisions of this final judgment pending its approval by the Court.

THEREFORE, before the taking of any testimony and without trial or adjudication of any such issue of fact or law herein, and upon consent of the parties, it is hereby ORDERED, ADJUDGED, AND DECREED as follows:

I

JURISDICTION

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

II

DEFINITIONS

As used in this final judgment:

- A. "Agreement" means any contract, agreement or understanding, whether oral or written, or any term or provision thereof.
- B. "Person" means any individual, corporation, partnership, company, sole proprietorship, firm or other legal entity.
- C. "Tampico fiber" is a natural vegetable fiber produced by the lechuguilla plant and grown in the deserts of northern Mexico. It is harvested by individual farmers, processed, finished and exported to the United States and worldwide, where it is used as brush filling material for industrial and consumer brushes. It is available in natural white, bleached white, black, gray and a wide variety of mixtures.
- D. "Resale price" means any price, price floor, price ceiling, price range, or any mark-up, formula or margin of profit relating to tampico fiber sold by distributors.

III

APPLICABILITY

- A. This final judgment applies to each of the defendants and to their owners, officers, directors, agents, employees, 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.
- B. Each defendant shall require, as a condition of any sale or other disposition of all, or substantially all, of its stock or assets used in the manufacture or sale of tampico fiber, that the

acquiring party or parties agree to be bound by the provisions of this final judgment, and that such agreement be filed with the Court.

IV

PROHIBITED CONDUCT

As to tampico fiber imported into or sold in the United States:

A. each defendant is enjoined and restrained from directly or indirectly entering into, adhering to, maintaining, furthering, enforcing or claiming any rights under any contract, agreement, arrangement, understanding, plan, program, combination or conspiracy with any other processor, supplier or distributor of tampico fiber to:

(1) raise, fix, or maintain the prices or other terms or conditions for the sale or supply of tampico fiber;

(2) allocate sales volumes, territories or customers for tampico fiber;

(3) discourage or eliminate any new entrant into the tampico fiber market; or

(4) restrict or eliminate the supply of tampico fiber to any customer;

B. each defendant is enjoined and restrained from communicating with any processor, supplier or distributor (other than its own processor, supplier or distributor) of tampico fiber regarding any current or future price, price change, discount, or other term or condition of sale charged or quoted or to be charged or quoted to any customer or potential customer for tampico fiber, whether communicated in the form of a specific price or in the form of information from which such specific price may be computed;

C. each defendant is enjoined and restrained from distributing to any processor, supplier or distributor (other than its own processor, supplier or distributor) of tampico fiber

price lists or other pricing material that is used, has been used, or will be used in computing prices or terms or conditions of sale charged or to be charged for tampico fiber;

D. each defendant is enjoined and restrained from communicating with any processor, supplier or distributor (other than its own processor, supplier or distributor) of tampico fiber regarding information pertaining to the volume of sales of tampico fiber or the location or identity of customers;

E. each defendant is enjoined and restrained from communicating with any processor, supplier or distributor regarding discouraging or eliminating any new entrant into the tampico fiber market or restricting or eliminating the supply of tampico fiber to any customer;

F. Ixtlera is enjoined and restrained from directly or indirectly entering into, adhering to, maintaining, furthering, enforcing or claiming any right under any contract, agreement, understanding, plan or program with any distributor to fix or maintain the prices at which tampico fiber sold by Ixtlera may be resold or offered for sale by any distributor;

G. Ixtlera is enjoined and restrained from directly or indirectly adopting, promulgating, suggesting, announcing or establishing any resale pricing policy for tampico fiber;

H. Ixtlera is enjoined and restrained from threatening any distributor with termination or terminating any distributor on the basis of that distributor's pricing; or discussing with any present or potential distributor any decision regarding termination of any other distributor for any reason directly or indirectly related to the other distributor's resale pricing, provided, however, that nothing herein shall prohibit Ixtlera from terminating a distributor for any reason other than the distributor's resale pricing;

I. MFC is enjoined and restrained from directly or indirectly entering into, adhering to, maintaining, furthering, enforcing or claiming any right under any contract, agreement, understanding, plan or program with any supplier to fix or maintain the prices at which tampico fiber may be resold or offered for sale by MFC or any other distributor;

J. each defendant is enjoined and restrained from participating or engaging directly or indirectly through any trade association, organization or other group in any activity which is prohibited in IV (A)-(I) above; and

K. Ixtlera is enjoined and restrained from merging with, acquiring all or part of the assets or securities of, or selling all or part of its assets or securities to the Mexican tampico fiber processor Fibras Saltillo, S.A. de C.V., or its owners, officers, directors, agents, employees, subsidiaries, successors and assigns without first providing plaintiff with at least 90 days written notice prior to closing the transaction for the purpose of investigating the proposed transaction. Such notification shall include a complete description, in English, of the proposed transaction and the reasons therefor. Ixtlera agrees to provide promptly all information, with English translations, reasonably requested by plaintiff in connection with its investigation of the proposed transaction, consents to the jurisdiction of the Court to adjudicate the legality of the proposed or consummated transaction under the antitrust laws of the United States and waives any objections to venue. Nothing in this paragraph shall prohibit Miguel Schwarz Marx, principal of Ixtlera, from divesting to any person, without notice, the 27.5 percent interest in Fibras Saltillo, S.A. de C.V. which he currently holds.

PERMITTED CONDUCT

A. Other than Section IV(A) of this final judgment, nothing contained in this final judgment shall prohibit a defendant from negotiating or communicating with any processor, supplier or distributor of tampico fiber or with any agent, broker or representative of such processor, supplier or distributor solely in connection with bona fide proposed or actual purchases of tampico fiber from, or sale of tampico fiber to, that processor, supplier or distributor.

B. Nothing contained in this final judgment shall prohibit defendant MFC from unilaterally deciding to resell tampico fiber at prices suggested by its supplier. However, any instance in which a supplier suggests the prices at which MFC should resell tampico fiber shall be reported in writing with a copy to MFC's Antitrust Compliance Officer. This report shall state the date, time and place of the communication, whether it was oral or written, the name and title of the other person or persons involved in the communication, briefly describe the pricing information provided, and if the communication was written, have attached a copy of the document containing the reference to the suggested resale prices. Such reports shall be retained in the files of MFC, and copies thereof shall be delivered to the Antitrust Division by the defendant on or about each anniversary date of this final judgment.

C. Nothing contained in this final judgment shall prohibit Miguel Schwarz Marx from obtaining information as to the prices Fibras Saltillo charged A&L Mayer Associates, Inc. or any successor to A&L Mayer Associates, Inc. that serves as a conduit between Fibras Saltillo and its United States distributor for tampico fiber so long as the pricing information is at least six

months old and is used solely to protect the value of Schwarz's investment in Fibras Saltillo under Mexican law.

D. Nothing contained in this final judgment shall prevent (1) MFC from being Ixtlera's exclusive distributor for tampico fiber in the United States, (2) MFC and Ixtlera from conducting negotiations regarding such an exclusive distributorship, or (3) Ixtlera from deciding to appoint another company as its exclusive distributor in the United States.

VI

COMPLIANCE PROGRAM

Each defendant shall establish within thirty (30) days of entry of this final judgment and shall thereafter for so long as it or its employees are engaged in the manufacture or sale of tampico fiber, maintain a program to insure compliance with this final judgment, which program shall include at a minimum the following:

A. designating an Antitrust Compliance Officer responsible, on a continuing basis, for achieving compliance with this final judgment and promptly reporting to the Department of Justice any violation of the final judgment;

B. within sixty (60) days after the date of entry of this final judgment, furnishing a copy thereof to each of its own, its subsidiaries', and its affiliates' (1) officers, (2) directors, and (3) employees or managing agents who are engaged in, or have responsibility for or authority over, the pricing of tampico fiber; and advising and informing each such person that his or her violation of this final judgment could result in a conviction for contempt of court and imprisonment, a fine, or both;

C. within seventy five (75) days after the date of entry of this final judgment, certifying to the plaintiff whether it has designated an Antitrust Compliance Officer and has distributed the final judgment in accordance with Sections VI (A) and (B) above;

D. within thirty (30) days after each such person becomes an officer, director, employee or agent of the kind described in Section VI (B), furnishing to him or her a copy of this final judgment together with the advice specified in Section VI (B);

E. annually distributing the final judgment to each person described in Sections VI (B) and (D);

F. annually briefing each person described in Sections VI (B) and (D) as to the defendant's policy regarding compliance with the Sherman Act and with this final judgment, including the advice that such defendant will make legal advice available to such persons regarding any compliance questions or problems;

G. annually obtaining (and maintaining) from each person described in Sections VI (B) and (D) a certification that he or she:

(1) has read, understands, and agrees to abide by the terms of this final judgment;

(2) has been advised of and understands the company's policy with respect to compliance with the Sherman Act and the final judgment;

(3) has been advised and understands that his or her non-compliance with the final judgment may result in conviction for criminal contempt of court and imprisonment, a fine, or both; and

(4) is not aware of any violation of the final judgment that has not been reported to the Antitrust Compliance Officer; and

H. on or about each anniversary date of the entry of the final judgment, submitting to the plaintiff an annual declaration as to the fact and manner of its compliance with this final judgment, including any reports responsive to Section V of this final judgment.

VII

INSPECTION AND COMPLIANCE

For the purpose of determining or securing compliance with this final judgment and subject to any legally recognized privilege, from time to time:

A. duly authorized 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, and on reasonable notice to a defendant made to its principal office, be permitted:

(1) access, during 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, which may have counsel present, 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, employees and agents of such defendant, who may have counsel present, regarding any such matters;

B. upon the written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division made to a defendant's principal office, such

defendant shall submit such written reports, under oath if requested, with respect to any of the matters contained in this final judgment, as may be requested;

C. no information or documents obtained by the means provided in this Section VII of the final judgment 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;

D. if at the time information or documents are furnished by a defendant to plaintiff, such defendant represents and identifies in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and such 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 such defendant is not a party; and

E. nothing set forth in this final judgment shall prevent the Antitrust Division from utilizing other investigative alternatives, such as Civil Investigative Demand process provided by 15 U.S.C. §§ 1311-1314 or a federal grand jury, to determine if the defendant has complied with this final judgment.

VIII

RETENTION OF JURISDICTION

Jurisdiction is retained by this Court for the purpose of: (1) enabling any of the parties to this final judgment to apply to this Court at any time for such further orders or directions as may be necessary or appropriate for the construction or carrying out of this final judgment, for the modification of any of the provisions hereof, for the enforcement of compliance herewith, and for the punishment of violations hereof; and (2) adjudicating the legality of any merger or acquisition of assets or securities described in Section IV (K) above.

IX

TEN-YEAR EXPIRATION

This final judgment will expire on the tenth anniversary of its date of entry.

X

PUBLIC INTEREST

Entry of this final judgment is in the public interest.

Dated:

UNITED STATES DISTRICT JUDGE