

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. E. I. du Pont de Nemours and Co., Verona Corp., Allied Chemical Corp., American Color & Chemical Corp., American Cyanamid Co., BASF-Wyandotte Corp., Ciba-Geigy Corp., Crompton & Knowles Corp. and GAF Corp., U.S. District Court, D. New Jersey, 1977-1 Trade Cases ¶61,447, (Apr. 18, 1977)

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United States v. E. I. du Pont de Nemours and Co., Verona Corp., Allied Chemical Corp., American Color & Chemical Corp., American Cyanamid Co., BASF-Wyandotte Corp., Ciba-Geigy Corp., Crompton & Knowles Corp. and GAF Corp.

1977-1 Trade Cases ¶61,447. U.S. District Court, D. New Jersey, Civil Action No. 74-1086, Entered April 18, 1977.

(Competitive impact statement and other matters filed with settlement: 41 *Federal Register* 52548, 42 *Federal Register* 9726). Case No. 2399, Antitrust Division, Department of Justice.

Sherman Act

Price Fixing: Exchanges of Information: Dye Manufacturers: Consent Decree.— Dye manufacturers were barred by a consent decree from agreeing on prices or other terms and conditions for the sale of dyes and on allocation of territories, markets or customers for the production, sale or distribution of any such dyes. They also were enjoined for a period of ten years from communicating or requesting any information concerning present or future prices or changes or revisions in prices. The manufacturers were not barred from communicating information related to a *bona fide* transaction or from exchanging price information that had already been released and circulated.

For plaintiff: Donald I. Baker, Asst. Atty. Gen., William E. Swope, Charles F. B. McAleer, Elliott H. Moyer, Bernard Wehrmann, Donald Ferguson, Philip F. Cody, and Melvin Lublinski, Attys., Dept. of Justice. **For defendants:** Herbert Dym, of Covington & Burling, Washington, D. C., for E. I. du Pont de Nemours & Co.; Miles W. Kirkpatrick, of Morgan, Lewis & Bockius, Washington, D. C., for Verona Corp.; Briscoe R. Smith, of Milbank, Tweed, Hadley & McCloy, New York, N. Y., for Allied Chemical Corp.; Crummy, Del Deo, Dolan & Purcell, Newark, N. J., for American Color & Chemical Corp.; Donovan Leisure Newton & Irvine, New York, N. Y., for American Cyanamid Co.; Thomas A. Dieterich, of Shearman & Sterling, New York, N. Y., for BASF-Wyandotte Corp.; Ralph L. McAfee, of Cravath, Swaine & Moore, New York, N. Y., for Ciba-Geigy Corp.; Arnold Manthorne, of Warner & Stackpole, Boston, Mass., for Crompton & Knowles Corp.; Stephen M. Axinn, of Skadden, Arps, Slate, Meagher & Flom, New York, N. Y., for GAF Corp.

Final Judgment

Meanor, D. J.: Plaintiff, United States of America, having filed its complaint herein on July 18, 1974, and plaintiff and defendants, by their respective attorneys, having each consented to the making and entering of this Final Judgment without trial or adjudication of any issue of fact or law herein and without this Final Judgment constituting any evidence or admission by any party with respect to any such issue;

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 as aforesaid, it is hereby

Ordered, Adjudged and Decreed, as follows:

I

[Jurisdiction]

This Court has jurisdiction of the subject matter of the action and of each of the parties hereto. The complaint states claims upon which relief may be granted against each of the defendants under Section 1 of the Act of Congress of July 2, 1890, as amended, entitled “An Act to protect trade and commerce against unlawful restraints and monopolies” (15 U. S. C. §1), commonly known as the Sherman Act.

II

[Definitions]

As used in this Final Judgment:

- (A) “Person” means any individual, corporation, partnership, association, firm, or other business or legal entity.
- (B) “Dye” means a soluble colored compound used for coloring textiles, leather, paper or other products, except for color additives refined, made and handled for certification pursuant to 21 U. S. C. 371 and 376; and 21 C. F. R. 8.1 *et seq.* and 9.1 *et seq.*, for use in or on foods, drugs and cosmetics.
- (C) “Manufacturer” means a person who produces and regularly solicits customers for the sale of a dye or dyes and includes each defendant.
- (D) “United States” means the United States of America, its territories, possessions, and other places under the jurisdiction of the United States.

III

[Applicability]

The provisions of this Final Judgment applicable to any defendant shall also apply to its subsidiaries, affiliates, successors, assigns, officers, directors, employees, and agents, 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. For the purpose of this Final Judgment, each defendant, together with its parent company, its controlled subsidiaries, and commonly controlled affiliates along with each of its officers, directors and employees when acting solely in such capacity shall be deemed to be one person. Except for sales to the plaintiff or any agency or instrumentality thereof, this Final Judgment shall not apply to activities outside the United States which do not directly affect the foreign or domestic commerce of the United States.

IV

[Pricing; Allocation]

Each defendant is enjoined and restrained from entering into, adhering to, maintaining, furthering, enforcing, or claiming any rights under any contract, agreement, arrangement, understanding, plan or program with any other Manufacturer or Manufacturers, directly or indirectly to:

- (A) Fix, maintain, determine or stabilize the price or other terms or conditions for the sale of any dye or dyes to any third person; or
- (B) Allocate, limit, apportion, or divide territories, markets or customers for the production, sale or distribution of any dye or dyes.

V

[Information; Prices]

Each defendant is enjoined and restrained from:

- (A) For the period of ten (10) years from the date of entry of this Final Judgment, communicating to any other Manufacturer information concerning:

- (1) Prices at which, or terms or conditions upon which, dyes would then be or are then being sold or offered for sale by said defendant;
- (2) Prices at which, or terms and conditions upon which, other than prices or terms or conditions described in subsection (1) of this paragraph (A), dyes have been sold or offered for sale by said defendant within the one (1) year period ending on the date of the communication;
- (B) Communicating to any other Manufacturer information concerning:
- (1) Future prices at which, or terms or conditions upon which, dyes will be sold or offered for sale by said defendant;
- (2) Consideration by said defendant of changes or revisions in the prices at which, or the terms or conditions upon which, said defendant sells or offers to sell dyes;
- (C) Requesting from any other Manufacturer any information of a type which said defendant could not communicate to such other Manufacturer without violating paragraph (A) or (B) of this Section V.

VI

[*Communication of Information*]

Without limiting the provisions of Section IV hereof, nothing in Section V hereof shall prohibit (1) the communication of information by a defendant to another Manufacturer in the course of, and related to, negotiating for, entering into, or carrying out a bona fide purchase or sale transaction between such defendant and such other Manufacturer; or (2) the transmission, without additional comment or explanation, to another Manufacturer, upon request of said Manufacturer, of such defendant's dyes price list or dyes price book (or any change therein) regularly issued in the course of business, which price book or price list (or said change) had been previously released and circulated to the trade generally, if such transmission is made on or after the effective date of the prices included in such price list or price book (or said change).

VII

[*Copies; Affidavits*]

- (A) Within sixty (60) days after the date of entry of this Final Judgment, each defendant herein shall furnish a conformed copy hereof to: (1) each of its own officers and directors; (2) each of its own employees who has managerial or supervisory authority in the pricing of dyes or for the establishment or modification of general terms and conditions of sale of dyes; (3) each officer, director and aforementioned employee of a domestic subsidiary of said defendant engaged in the manufacture or sale of dyes; and (4) its parent corporation, if any; and shall advise and inform each such person that violation of this Final Judgment could result in a conviction for contempt of court and imprisonment and/or fine.
- (B) Within ninety (90) days after the date of entry of this Final Judgment, each defendant shall file with the plaintiff an affidavit concerning the fact and manner of compliance with Paragraph (A) of this Section.
- (C) For a period of ten (10) years after the date of entry of this Final Judgment, each defendant shall furnish a copy thereof to each person who becomes an officer, director, or employee described in Paragraph (A) of this Section, together with the advice specified by said subsection, within thirty (30) days after each such person becomes an officer, director, or employee described in said Paragraph (A) of this Section.
- (D) For a period of ten (10) years from the date of entry of this Final Judgment, each defendant is ordered to file with the plaintiff, within thirty (30) days of each anniversary date of such entry, an affidavit concerning the fact and manner of compliance with Paragraph (C) of this Section.

VIII

[*Compliance*]

For the purpose of determining or securing compliance with this Final Judgment and for no other purpose, 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, who 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.

No information or documents obtained by the means provided in this Section VIII 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 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 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 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 that defendant is not a party.

IX

[*Retention of Jurisdiction*]

Jurisdiction is retained 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 this Final Judgment or for the modification of any of the provisions thereof and for the enforcement of compliance therewith and for the punishment of any violation thereof.

X

Entry of this Final Judgment is in the public interest.