Nov 25 - 1952
Presented to Court for its signature - The Court refused to sign or approve it for the reasons this day stated in the Record -
s/Robert R. Nevin
Chief Judge, S. Dist. of Ohio
(notation made by Judge Nevin in his own handwriting)

IN THE UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF OHIO

UNITED STATES OF AMERICA, Plaintiff vs. NEW WRINKLE, INC., THE KAY AND ESS COMPANY, Defendants.	Civil No. 1006 FILED NOV 25 1952 HOWARD E. PARKER, Clerk

Approved for record Sept. 27, 1955
FILED SEP 27 1955 WM. ROBINETT JR., Clerk

FINAL JUDGMENT

Plaintiff, United States of America, having filed its complaint herein on September 21, 1948; the defendants having separately moved to dismiss the complaint and this Court having sustained such motions; the United States Supreme Court, upon appeal, having reversed the judgment of this Court; plaintiff and defendant The Kay and Ess Company (the name of which has, since the filing of the complaint herein, been changed to Pirm, Inc.), by their attorneys herein, having severally consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or further adjudication of any issue of law herein and without admission by either of them in respect of any such issue; defendant New Wrinkle, Inc., not being a party to this Final Judgment and the proceeding against defendant New Wrinkle, Inc., being in no way affected by this Final Judgment;

NOW, THEREFORE, before any testimony has been taken and without trial or further adjudication of any issue of fact or law herein, and upon consent of plaintiff and defendant The Kay and Ess Company hereto, it is hereby

ORDERED, ADJUDGED AND DECREED as follows:

I.

The Court has jurisdiction of the subject matter herein and of the parties signatory to this Final Judgment, and the complaint states a cause of action against defendant The Kay and Ess Company under Section 1 of the Act of Congress of July 2, 1890, entitled "An Act to Protect Trade and Commerce Against Unlawful Restraints and Monopolies", commonly known as the Sherman Act, as amended.

II.

As used in this Final Judgment:

(A) "K & S" shall mean defendant The Kay and Ess Company, a corporation organized and existing under the laws of the State of Ohio, and shall be deemed to include said company under its present name, Pirm, Inc.;

(B) "Wrinkle finishes" shall mean each and every enamel, varnish or paint which has been compounded from such materials and by such methods as to produce, when applied and dried, a hard wrinkled surface on metal or other material;

(C) "Wrinkle patents" shall mean each and all patents related to wrinkle finishes and their manufacture and use, all applications therefor and all patents issued upon such applications, including all re-issues, divisions, continuations or extensions thereof;

(D) "Person" shall mean an individual, firm, partnership, corporation, association, or any other legal or business entity.

III.

The provisions of this Final Judgment applicable to defendant K & S shall apply to said defendant, its officers, directors, agents, employees, subsidiaries, successors and

assigns, and all other persons acting or claiming to act under, through or for such defendant.

IV.

Defendant K & S is enjoined and restrained from entering into, adhering to, maintaining or furthering any combination, conspiracy, contract, agreement, understanding, plan or program, directly or indirectly, with any person engaged in the manufacture, sale or distribution of wrinkle finishes, or in the holding, licensing or otherwise exploiting of wrinkle patents, providing for, or which has the purpose or effect of, fixing, determining, maintaining or adhering to prices, discounts or other terms or conditions for the sale of wrinkle finishes.

V.

Defendant K & S is enjoined and restrained, in connection with the manufacture, distribution or sale of wrinkle finishes, from (a) using, or suggesting or requiring the use of, any price, term or condition of sale, price schedule or classification list compiled or disseminated by any other person, or (b) suggesting or requiring the use by any other person of any price, term or condition of sale, price schedule or classification list compiled or disseminated by defendant K & S.

VI.

A. Defendant K & S is ordered and directed to cancel and terminate the agreement between defendant The Kay and Ess Company and defendant New Wrinkle, Inc., dated March 11, 1948, and any agreements or understandings amending or modifying said agreement.

B. Defendant K & S is enjoined and restrained from asserting any rights whatsoever under the agreement between defendant The Kay and Ess Company and Chadeloid Chemical Co., dated November 2, 1937, and any agreements or understandings amending or modifying said agreement.

C. Defendant K & Sis enjoined and restrained from entering into, adopting, adhering to or furthering any agreement or course of conduct for the purpose or with the effect of maintaining, reviving or reinstating any of said agreements or understandings.

D. Defendant K & S is enjoined and restrained from:

(1) Entering into, adhering to, maintaining, furthering or claiming any rights under any contract, agreement or understanding whatsoever relating, directly or indirectly, to wrinkle finishes or wrinkle patents, with defendant New Wrinkle, Inc.

(2) Acquiring or holding, directly or indirectly, or claiming any rights under, any wrinkle patents or any other assets in conjunction with any other person engaged in the manufacture, sale or distribution of wrinkle finishes or in the holding, licensing or otherwise exploiting of wrinkle patents.

VII.

Defendant K & S is enjoined and restrained from causing, authorizing or knowingly permitting any of its officers, directors, agents or employees to serve as an officer, director,

agent or employee of new Wrinkle, Inc., or to serve at the same time as an officer, director, agent or employee of any two persons engaged in the manufacture, sale or distribution of wrinkle finishes, or in the holding, licensing or otherwise exploiting of wrinkle patents.

VIII.

A. Defendant K & S is hereby ordered and directed to grant to any applicant making written request therefor a non-exclusive license to make, use and vend under any, some or all wrinkle patents which are issued to or applied for by such defendant within five years from the date of the entry of this Final Judgment, or which are issued or applied for within the aforesaid five year period and under which such defendant has the right to issue a license. (The defendant K & S has represented to this Court that it does not now own any wrinkle patents.)

B. Defendant K & S is enjoined and restrained from making any sale or other disposition of any of said wrinkle patents which deprives the defendant of the power or authority to grant such licenses unless it sells, transfers or assigns such patents and requires as a condition of such sale, transfer or assignment that the purchaser, transferee or assignee shall observe the requirements of this Section and the purchaser, transferee or assignee shall file with this Court, prior to consummation of said transaction, an undertaking so to be bound.

C. Defendant K & S is enjoined and restrained from including any restriction or condition whatsoever in any license granted by it pursuant to the provisions of this

Section except that:

(1) The license may be non-transferable;

(2) A reasonable non-discriminatory royalty may be charged;

(3) Reasonable provisions may be made for periodic inspection of the books and records of the licensee by an independent auditor or any person acceptable to the licensee who shall report to the licensor only the amount of the royalty due and payable;

(4) Reasonable provision may be made for the cancellation of the license upon failure of the licensee to pay the royalties or to permit the inspection of his books and records as hereinabove provided, and

(5) The license must provide that the licensee may cancel the license at any time upon 30 days' written notice to the licensor.

D. Within 30 days after the date of application for, issuance or acquisition of any wrinkle patents within the aforesaid five year period, defendant K & S shall advise this Court and the Attorney General, in writing, of the number and date of such application, issuance or acquisition.

E. Upon receipt of a written request for a license under the provisions of this Section, defendant K & S shall advise the applicant in writing of the royalty which it deems reasonable for the patent or patents to which the request pertains. If the parties are unable to agree upon a reasonable royalty within 60 days from the date such request for a

license is received by the defendant, the applicant therefor or the defendant K & S may forthwith apply to this Court for the determination of a reasonable royalty, and the defendant shall upon receipt of notice of the filing of such application promptly give notice thereof to the Attorney General. In any such proceeding the burden of proof shall be on the defendant K & S to establish the reasonableness of the royalty requested, and the reasonable royalty rates, if any, determined by this Court shall be retroactive for the applicant and all other licensees under the same patent or patents to the date the applicant files his application with this Court. Pending the completion of any such negotiations or proceeding, the applicant shall have the right to make, use and vend under the patents to which the application pertains without payment of royalty or other compensation as above provided, but subject to the provisions of subsection (F) of this Section.

F. Where the applicant has the right to make, use and vend under subsection (E) of this Section, said applicant or the defendant K & S may apply to this Court to fix an interim royalty rate pending final determination of what constitutes a reasonable rate. If this Court fixes such interim royalty rate, defendant shall then issue and the applicant shall accept a license providing for the periodic payment of royalties at such interim rate from the date of the filing of such application by the applicant. If the applicant fails to accept such license or fails to pay the interim royalty rate in accordance therewith, such action shall be ground for the dismissal of his application and

his rights under subsection (E) above shall terminate. Where an interim license has been issued pursuant to this subsection (F), reasonable royalty rates, if any, as finally determined by this Court shall be retroactive for the applicant and all other licensees under the same patent or patents to the date the application was filed with this Court.

G. Nothing herein shall prevent any applicant from attacking, in the aforesaid proceedings or in any other controversy, the validity or scope of any of the wrinkle patents, nor shall this Final Judgment be construed as importing any validity or value to any of the said wrinkle patents.

IX.

For the purpose of securing compliance with this Final Judgment, duly authorized representatives 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 in writing to the defendant K & S, to its principal office, be permitted, (1) access during the office hours of said defendant to all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of said defendant relating to any matters contained in this Final Judgment and (2) subject to the reasonable convenience of said defendant and without restraint or interference from it, to interview officers or employees of said defendant, who may have counsel present, regarding any such matters, and upon request said defendant

shall submit such written reports as might from time to time be reasonably necessary to the enforcement of this Final Judgment. No information obtained by the means provided in this Section IX shall be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of such Department, except in the course of legal proceedings to which the United States is a party for the purpose of securing compliance with this Final Judgment or as otherwise required by law.

X.

Jurisdiction of this cause 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, for the modification or termination of any of the provisions thereof, and for the enforcement of compliance therewith and the punishment of violations thereof.

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s/ Sept. 27, '55 Lester L. Cecil
United States District Judge

We hereby consent to the entry of the foregoing Final Judgment:

For the Plaintiff:

s/ Newell A. Clapp
NEWELL A. CLAPP
Acting Assistant Attorney General

s/ Edwin H. Pewett
EDWIN H. PEWETT

s/ Ephraim Jacobs
EPHRAIM JACOBS
Special Assistant to the
Attorney General

s/ Robert B. Hummel
ROBERT B. HUMMEL

s/ Ray J. O'Donnell
RAY J. O'DONNELL
United States Attorney

s/ Max Freeman
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s/ Norman J. Futor 9-27-55

s/ Robert M. Dixon 9-27-55

Attorneys for Plaintiff

For Defendant The Kay and Ess Company:

s/ Hubert A. Estabrook
Hubert A. Estabrook
Attorney for Defendant
The Kay and Ess Company