UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

United States of America,	:	
	:	
Plaintiff,	:	
	:	
vs.	:	Civil No. 1006
	:	
New Wrinkle, Inc.,	:	(At Dayton)
	:	
Defendants.	:	October 27, 1955
	:	
	:	FINAL JUDGMENT

This cause having come on regularly for hearing and the Court having heard the testimony of witnesses and considered all of the testimony, depositions, stipulations, exhibits and other evidence, has heretofore entered its Opinion, Findings of Fact and Conclusions of Law, adjudging the defendant, New Wrinkle, Inc., to have violated Section 1 of the Sherman Act; and the Court having further considered two proposed forms of final judgment for each of the parties, United States of America and the defendant, New Wrinkle, Inc., briefs of counsel in support of said proposed final judgments, together with oral presentation of counsel upon each of the first of said proposals, does now

ORDER, ADJUDGE AND DECREE AS FOLLOWS:

I

As used in this Final Judgment:

(A) "New Wrinkle" means defendant New Wrinkle, Inc., a corporation organized and existing under the laws of the State of Delaware;

(B) "Wrinkle finishes" means 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" means 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 reissues, divisions, continuations or extensions thereof;

(D) "Person" means an individual, firm, partnership, corporation, association or business entity.

II

The provisions of this Final Judgment applicable to defendant New Wrinkle shall apply to said defendant, its subsidiaries, successors, assigns, and each of its officers, directors, agents and employees, and to all other persons in active concert or participation with it who receive actual notice of this Final Judgment by personal service or otherwise.

III

Defendant New Wrinkle has violated Section 1 of the Act of Congress of July 2, 1890, 26 Stat. 209, as amended, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," commonly known as the Sherman Act. Said violations have consisted of an unlawful combination and conspiracy in restraint of trade and commerce in Wrinkle finishes among the several states

of the United States and with the Dominion of Canada and in the unlawful use of wrinkle patents for the purpose of effectuating said combination and conspiracy. Defendant New Wrinkle has been and now is a party to contracts, agreements, understandings in unreasonable restraint of said trade and commerce.

IV

(A) The agreement of November 2, 1937 between the Kay & Ess Company, the Kay and Ess Chemical Corporation and Chadeloid Chemical Company to which New Wrinkle became a party on December 28, 1937 and the agreement of March 11, 1938 between New Wrinkle and the Kay and Ess Company, and all existing amendments and supplements to both of said agreements are, insofar as these agreements remain executory and provide for means or procedures for the fixing of prices of wrinkle finishes are hereby adjudged and decreed to be unlawful and such executory provisions are hereby terminated.

(B) Paragraph 7 of all existing license agreements and amendments and supplements thereto, to which New Wrinkle is a party as licensor of any wrinkle patents, including but not limited to licenses with the licensees listed on Exhibit A hereto, is hereby adjudged and decreed to be unlawful under Section 1 of the Sherman Act and said paragraph 7 in each of said license agreements is hereby terminated.

(C) Defendant, New Wrinkle is enjoined and restrained from further performing, attempting to perform or enforcing said paragraph 7 of said license agreements and from renewing any of said license agreements with

paragraph 7, or any other provision purporting or intended to enable New Wrinkle to accomplish directly or indirectly any control over the prices of wrinkle finishes.

V

Defendant New Wrinkle is enjoined and restrained from:

(A) Entering into, adhering to, maintaining, or furthering directly or indirectly, any combination, conspiracy, plan or program with any person which has the purpose or effect of, or entering into any contract, agreement, or understanding with any person which has the purpose or effect of, fixing, determining, or maintaining prices or discounts in the sale of wrinkle finishes; or enforcing or attempting to enforce by any means, or claiming any rights under any price fixing, price determining or price maintaining provisions of any existing contracts or agreements.

(B) Distributing, disseminating, communicating, disclosing or suggesting, to any person, prices or other price information relating to wrinkle finishes;

(C) Instituting or threatening to institute, or maintaining or continuing any action or proceeding to collect damages, royalties or other compensation based upon acts of infringement of any wrinkle patents alleged to have occurred prior to January 5, 1951;

(D) Causing, authorizing or knowingly permitting any of its officers, directors, agents or

employees to serve as an officer, director, agent or employee of any other person engaged in the manufacture, sale or distribution of wrinkle finishes, or engaged in the holding, licensing or otherwise exploiting of wrinkle patents, without consent of Court upon showing of good cause.

VI

(A) Defendant New Wrinkle is ordered and directed to grant to any applicant making written request therefor, a non-exclusive license to make, use and vend, for the full unexpired terms thereof, under any, some or all wrinkle patents owned or controlled by defendant New Wrinkle which--

(1) Are issued and existing at the date of entry of this Final Judgment;

(2) Are issued after the date of entry of this Final Judgment on applications on file on said date or filed within five (5) years thereafter.

(B) Defendant New Wrinkle is enjoined and restrained from making any sale or other disposition of any of said wrinkle patents which deprives said 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 New Wrinkle is enjoined and restrained from including any restriction or condition whatsoever, except by further order of the Court, 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 nay (sic) 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.

VII

(A) It appearing to the Court from the evidence that all of the license agreements issued by the defendant New Wrinkle, provided for the payment by the licensee of a royalty of five cents per gallon to the licensor; and it further appearing to the Court that no claim was made

that the royalty fixed by the license agreements was unreasonable, improper or in violation of law and there being no evidence to show that said royalty was unreasonable, improper or in violation of law, it is presumed that a royalty of five cents per gallon is reasonable.

(B) IT IS, THEREFORE, ADJUDGED that a royalty of five cents per gallon is a reasonable royalty, unless within thirty days from the date of service of copies of this decree upon licensees, there is filed in this Court by one or more of said licensees, an objection supported by affidavits showing that said royalty is unreasonable.

Upon the filing of such an objection, notice of which shall be served on the plaintiff and the defendant New Wrinkle, the Court will, if it considers there is probable cause to believe that a royalty of five cents per gallon is unreasonable, order a hearing in open court, to be held on such objection. Notice of such hearing shall be given to the plaintiff, the defendant New Wrinkle, and the objecting licensees or their counsel.

The royalty determined by the Court at such hearing to be a reasonable royalty, shall become effective as the reasonable royalty allowed to the defendant New Wrinkle, and shall be retroactive to the date of the filing of the objection.

(C) Existing license agreements providing for a royalty of five cents per gallon shall not be invalidated by reason thereof, but shall be subject to any change of royalty ordered by the Court under paragraph (B) hereof. New License agreements may be issued to applicants with a provision for royalties at the prevailing rate and not in excess of five cents per gallon, unless increased by the provisions of paragraph (D) hereof, and said new license agree-

ments shall be subject to all conditions and restrictions otherwise fixed by this Final Judgment Order.

(D) If the defendant New Wrinkle, desires to set a royalty rate greater than five cents per gallon in license agreements now existing or to be issued in the future, said defendant shall make application therefor to this Court. If, upon hearing after notice to all interested parties, the Court grants the application of the defendant, New Wrinkle, or makes any change in the royalty rate in excess of five cents per gallon, said new rate shall be retroactive to the date of the application.

VIII

Defendant New Wrinkle is ordered and directed, within 70 days from the date of entry of this Final Judgment, to provide a copy thereof to each existing licensee under any of the 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 Anti-trust Division, and on reasonable notice in writing to the defendant New Wrinkle, 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. 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.

(Signed) Lester L. Cecil
UNITED STATES DISTRICT JUDGE,
Southern District of Ohio.