

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. American Lecithin Company, et al., U.S. District Court, N.D. Ohio, 1946-1947 Trade Cases ¶57,542, (Feb. 17, 1947)

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United States v. American Lecithin Company, et al.

1946-1947 Trade Cases ¶57,542. U.S. District Court, N.D. Ohio, Eastern Division. Civil Action No. 24115. Filed February 17, 1947.

Consent decree entered against producers of lecithin, an oil extract widely used in industry, enjoins defendants from restraining trade in the manufacture and sale of lecithin by participating in common selling or purchasing arrangements.

A defendant company is required to license a group of its patents on a royalty-free basis and without restriction, and the remainder of its patents at uniform reasonable royalties and without restriction. Various illegal domestic agreements, a cartel agreement between defendants and foreign producers of lecithin, future price fixing, and divisions of fields, customers, or markets among defendants, are also enjoined.

For plaintiff: Don C. Miller, Cleveland, Ohio, George B. Haddock, Melville C. Williams, and Willis L. Hotchkiss, all of Chicago, Ill.

For defendants: Roger Hinds and Richard F. Seaman, of New York City and Cleveland, Ohio, for American Lecithin Co.; Glenn S. Stiles, Minneapolis, Minn., and Raymond T. Jackson and Clayton A. Quintrell, both of Cleveland, Ohio, for Archer-Daniels-Midland Co.; John A. Duncan, Cleveland, Ohio, for The Glidden Co.; Eugene T. McQuade, New York City, and Wm. L. West, Cleveland, Ohio, for Ross and Rowe, Inc.

Final Judgment

Plaintiff, United States of America, having filed its complaint herein on June 24, 1946; all the defendants having appeared and severally filed their answers to such complaint denying any violation of law; and all parties by their respective attorneys herein having severally consented to the entry of this final judgment without trial or adjudication of any issue of facts or law herein and without admission of any party defendant in respect of any such issue;

NOW THEREFORE, without any testimony or evidence having been taken herein, and without trial or adjudication of facts or law herein, and upon consent of all parties hereto, it is hereby ordered and decreed

I

That this Court has jurisdiction of the subject matter and of all parties hereto; that the complaint states a cause of action against the defendants under Sections 1 and 2 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 and acts amendatory thereof and supplemental thereto.

[*Definitions*]

II

Definitions as used in this judgment:

- (a) "American" means the defendant American Lecithin Company.
- (b) "Archer" means the defendant Archer-Daniels-Midland Company.
- (c) "Glidden" means the defendant The Glidden Company.

(d) "Rowe" means the defendant Ross and Rowe, Inc.

(e) "Person" includes any individual, partnership, firm, corporation, association, trustee, or any other business or legal entity.

(f) "Lecithin" means a phosphatide consisting of a natural organic substance found in many animal and vegetable products such as egg yolks, soy beans and corn. As of the time of this judgment, it is principally produced as a by-product in the recovery and processing of soy-bean oil, and, to a lesser extent, of corn oil.

(g) "Process Patents" mean all United States and foreign letters patent, and applications for such letters patent, owned or controlled by defendant American or under which American has the power to issue licenses or sublicenses, which relate to any method or process, or improvements on any method or process, employed or useful in the manufacture, production, or extraction of lecithin, and shall also include any such patents in the field hereafter issued upon applications therefor which are now pending, and any renewals, extensions, reissues, or divisions, of any such letters or applications. Such process patents as are now owned or controlled by defendant American are listed in Exhibit A which is hereto attached and made a part hereof.

(h) "Use Patents" mean all United States or foreign letters patent and applications for such letters patent, owned or controlled by defendant American or under which American has power to issue licenses or sublicenses, which relate to the use of, or improvements on the use of, or to any method or process or improvements on any method or process of using, lecithin alone or in combination with other materials in the production, processing, or treatment of any other article or product, and shall include any such patents in the field hereafter issued upon any applications therefor now pending and any renewals, continuations, reissues, or divisions of any such letters patent or applications. Such "use patents" as are now owned or controlled by defendant American are listed in Exhibit B which is hereto attached and made a part hereof.

(i) "Patents" where used without further qualification means both process and use patents as herein defined.

III

References herein to any defendant shall be deemed to include such defendant, its successors, subsidiaries; assigns, officers, directors, agents, members, employees, and each person acting or claiming to act under, through, or for such defendant.

[*Unrestricted Licensing of Process Patents Ordered*]

IV

(a) Defendant American is hereby ordered and directed to grant to each applicant therefor a non-exclusive license to make, use, and vend under any, some, or all process patents as herein defined, and is hereby enjoined and restrained from making any sale or disposition of any of said patents which deprives it 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 Sections IV, X and XI of this judgment and the purchaser, transferee or assignee shall file with this Court, prior to consummation of said transaction, an undertaking to be bound by the provisions of said Sections IV, X and XI of this judgment.

(b) Defendant American is hereby enjoined and restrained from including any restriction or condition whatsoever in any license or sublicense granted by it pursuant to the provisions of this section except that (1) the license may be non-transferable; (2) a reasonable nondiscriminatory royalty may be charged; (3) reasonable provision 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 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; (5) the license must provide that the licensee may cancel the license at any time after two years from the initial date thereof by giving thirty days' notice in writing to the licensor.

(c) Upon receipt of written request for a license under the provisions of this section, defendant American 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 sixty (60) days from the date such request for the license was received by American, the applicant therefor may forthwith apply to this Court for the determination of a reasonable royalty, and American 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 American to establish the reasonableness of the royalty requested by it, and the reasonable royalty rates, if any, determined by the Court shall apply to the applicant and all other licensees under the same patent or patents. Pending the completion of negotiations or any such proceeding, the applicant shall have the right to make, use, and vend under the patents to which his application pertains without payment of royalty or other compensation, but subject to the provisions of subsection (d) of this section.

(d) Where the applicant has the right to make, use, and vend under subsection (c) of this section, defendant American may apply to the Court to fix an interim royalty rate pending final determination of what constitutes a reasonable royalty, if any. If the Court fixes such interim royalty rate, American shall then issue and the applicant shall accept a license, or, as the case may be, a sublicense, 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 in accordance therewith, such action shall be ground for the dismissal of his application. Where an interim license or sublicense has been issued pursuant to this subsection, reasonable royalty rates, if any, as finally determined by the Court shall be retroactive for the applicant and all other licenses under the same patents to the date the applicant files his application with the Court.

(e) Each defendant shall, to the extent that it may do so, grant or cause to be granted, to any applicant making written request therefor, a non-exclusive license or sublicense as to the respective patents which now or hereafter shall come, within the scope and operation of any license or other agreement now or hereafter held by such defendant in behalf of or in trust for, the defendant American; including but not limited to the agreements which are now held in trust by the defendant Glidden for the defendant American, and described in Exhibit C attached hereto and made a part hereof. Each such license or sublicense shall be granted by the particular defendant subject to the terms and conditions and pursuant to the procedures set forth in Section IV-(a), (b), (c) and (d). If, as, and when the defendant American shall acquire the right to grant such licenses or sublicenses substantially as may now be granted by another defendant now holding such rights in behalf of or in trust for American, then the obligation upon such other defendant (other than the defendant American) to grant said licenses or sublicenses under the patents referred to in the first sentence of this subsection shall automatically cease and terminate but such obligation shall then devolve upon the defendant American which is ordered and directed, in such event, to grant to any applicant making written request therefor a non-exclusive license or sublicense as above referred to and upon the terms and conditions and pursuant to the procedures set forth in Section IV-(a), (b), (c) and (d) above.

(f) Defendant American shall grant to any applicant making written request therefor, a non-exclusive unrestricted and royalty-free right and license to make, use and vend under any one or more of the use patents as herein defined, and is hereby enjoined and restrained from making any disposition of any of said patents which deprives it 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 thereof shall observe the requirements of Sections IV, X and XI of this judgment and the purchaser, transferee or assignee shall file with this Court, prior to consummation of said transaction, an undertaking to be bound by the provisions of said Sections IV, X and XI of this judgment.

(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 patents nor shall this judgment be construed as importing any validity or value to any of said patents.

[*Infringement Suits Enjoined*]

Defendant American is enjoined and restrained from instituting or threatening to institute, or maintaining, or continuing any suit or proceeding for acts of infringement of any of its patents alleged to have occurred prior to the date of this judgment.

[*Price Fixing and Other Practices in Restraint of Trade Enjoined*]

VI

Each defendant is hereby enjoined and restrained from directly or indirectly entering into, adhering to, maintaining or furthering any contract, combination, agreement, undertaking or arrangement among themselves or with any other person:

- (a) To fix, establish, maintain, or make uniform the price at which lecithin is sold;
- (b) To restrict sales of lecithin by any licenses or sublicenses, or any purchaser;
- (c) To refrain from competing in the manufacture and sale of lecithin in any territory, or for any customers or markets;
- (d) To refrain from making particular types of grades of lecithin or products containing lecithin;
- (e) To establish or perpetuate any arrangement under which the defendants who produce lecithin sell all or substantially all of their production through a common sales agent or to a common purchaser for resale.

This section shall not be construed to apply to the legality or illegality of licenses under any patents not covered by this judgment.

VII

The defendants American and Rowe are each enjoined and restrained from (a) lecithin for resale from, or acting as the sales agent in selling lecithin for, both defendants Archer and Glidden, or (b) acting as the exclusive sales agent for, or making any exclusive purchasing arrangement with, any two producers of lecithin provided, however, that if either American or Rowe, in purchasing lecithin from or acting as sales agent in selling lecithin produced by either Archer or Glidden, cannot secure from such single defendant producer lecithin of a general classification not produced by such defendant producer although produced by the other defendant producer, then American or Rowe may buy for resale such general classification of lecithin from the defendant producing it.

VIII

The defendants, Archer and Glidden, are each enjoined and restrained from selling lecithin through either defendant American or Rowe as a common sales agent or from selling lecithin to either of them as a common purchaser for resale except to the extent allowed by Section VII, unless it can establish that it exercised due business diligence and had no knowledge of the existence of such act or practice.

[*Agreements Cancelled, Performance Enjoined*]

IX

Each of the contracts, agreements, arrangements or regulations hereafter described, is hereby cancelled, as provided below, and each defendant is hereby enjoined and restrained from the further performance of any such contract, agreement, arrangement or understanding, except as herein expressly permitted, and from adopting, adhering to or furthering any course of conduct for the purpose, or with the effect, of maintaining, reviving, or reinstating any such contract, agreement, arrangement or understanding:

- (a) Agreement of December 5, 1934, among Archer, Glidden, Rowe, American, Aarhus Oliefabrik and Hansa-Muehle, which is set forth as Exhibit "A" of the Complaint; but such cancellation shall not relate to or affect the validity or invalidity of such optional rights, if any, as presently exist under said agreement, permitting American to purchase any of its outstanding shares of stock.

(b) All license agreements relating to the patents which have been heretofore entered into between American and Glidden, such cancellation to be effective upon the execution by American and Glidden of a uniform license agreement pursuant to Section IV hereof, or upon the expiration of sixty days from the date of the entry of this judgment, whichever is earlier.

(c) All license agreements relating to the patents heretofore entered into between American and Archer, such cancellation to be effective upon the execution by Archer and American of a uniform license agreement pursuant to Section IV hereof or upon the expiration of sixty days from the date of this judgment, whichever is earlier; provided, however, that the agreement of May 1, 1941 between said defendants may remain in force and effect but not beyond one year from the date hereof and solely for such quantities of lecithin as are needed by American in order to perform its existing contracts for the sale of lecithin.

(d) Agency agreement of November 10, 1939, by and between American and Rowe which is set forth as Exhibit C of the complaint, except that said agreement may remain in force and effect but not beyond one year from the date hereof for such quantities of lecithin as American is obligated thereunder to Rowe with respect to sales made or contracted for through Rowe prior to the date hereof.

(e) The agreement entered into between American and The Proctor & Gamble Company on or about February 1944 under which Proctor & Gamble agreed to sell and American to buy certain lecithin produced by Proctor & Gamble, such cancellation to be effective 60 days from the date of the entry of this judgment.

[*Justice Department Given Access to Records of Defendants*]

X

For the purpose of securing compliance with this judgment and for no other purpose, duly authorized representatives of the Department of Justice shall, upon written request of the Attorney General or an Assistant Attorney General, and on reasonable notice to any defendant, be permitted, subject to any legally recognized privileges, (a) access during the office hours of such defendant to all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of such defendant relating to any of the matters contained in this judgment; and (b) subject to the reasonable convenience of such defendant and without restraint or interference from it, to interview officers or employees of such defendant, who may have counsel present, regarding any such matters; provided, however, that no information obtained by the means permitted in this paragraph shall be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of the Department of Justice, except in the course of legal proceedings to which the United States is a party for the purpose of securing compliance with this judgment or as otherwise required by law.

[*Licensees To Be Notified of Decree*]

XI

Defendant American, within thirty days after the entry of this judgment, shall send to each present licensee under patents subject to subsection (a), (b), (c), and (d) of Section IV a copy of this judgment, and shall notify each licensee under patents subject to subsection (f) of Section IV, in a form of notice submitted to and approved by the Assistant Attorney General in charge of the Antitrust Division, informing them of their rights under this decree. In the case of licenses applied for after the entry of this judgment and subject to subsections (a), (b), (c), and (d) of Section IV, a copy of this judgment shall be sent to each such applicant promptly after the application is made. Each applicant for a license subject to subsection (f) of Section IV shall be provided with a copy of the notice provided for aforesaid promptly after the application is made.

[*Defendants To File Report of Compliance*]

XII

Each of the defendants shall file with this Court and with the Attorney General of the United States, or with the Assistant Attorney General in charge of the Antitrust Division, a report within ninety days after the date of the entry of this judgment, of all action taken by them to comply with or conform to the terms of this judgment.

[*Jurisdiction Retained*]

XIII

Jurisdiction of this cause is retained by this Court for the purpose of enabling any of the parties to this decree to apply to the Court at any time for such further orders or directions as may be necessary or appropriate for the construction or carrying out of this judgment, for the modification thereof, the enforcement or compliance therewith, and for the punishment of violations thereof.

EXHIBIT "A"

U. S. Patent: No. 1,776,720, Purification of Phosphatides (Vacuum-Solvent); No. 1,892,588, Treatment of Vegetable Lecithin (Dibenzoyl Peroxide); No. 1,893,393, Refinement of Vegetable Phosphatides (H₂O₂) ; No. 1,895,424, Phosphatides & Fatty Oil (Selective Solvent); No. 1,917,734, Extracting Oil from Seeds (Benzol-Alcohol); No. 2,020,662, Prod. of Phosphatide Prep. (Alkali Metal Hydroxide); No. 2,024,398, Production of Lecithin (Hexane); No. 2,057,695, Prod. of Phosphatide Prep. (Oil Free with Carrier); No. 2,194,842, Soft Lecithin Preparation; No. 2,249,002, Prep. of Vegetable Phosphatides (Use of Fools); No. 2,287,838, Confection & Product (Phosphatides plus a salt)—Claims 16, 17, 18, 19, 20; No. 2,355,081, Phosphatide Comp. (Reduce emulsifying); No. 2,373,686, Phosphatide product (Methylated); No. 2,374,681, Phosphatide Comp. (Organic Sulfuric Acid); No. 2,391,462, Phosphatide Comp. (Glycerol Phosph. Acid) ; No. 2,400,120, Phosphatide Comp. (Acid Liberating); No. 2,403,284, Phosphatide Lubricants—Claims 1, 2, 3, 4.

Application No. 501,178, Sulfur Containing Phosphatide—Claims 10, 19, 20; No. 504,904, Heat Treated Phosphatide—Claims 7, 30, 31, 32, 33, 34; No. 512,970, Nitrated Cephalin—Claims 8, 11, 13; No. 606,716, Improved Margarine Lecithin—Claims 1, 2, 3, 4, 13, 14, 15, 16, 17, 18, 19.

Canada: Patent No. 411,090, Confection & Product—Claims 16, 17, 18, 19, 20.

Britain: Patent No. 528,377, Confection & Product—Claim 9; Application No. 21272-46, Improved Margarine Lecithin—Claims 1, 2, 3, 4, 5, 6, 7, 8, 9, 10.

France: Application No. 518,430, Improved Margarine Lecithin—Claims 1, 2.

Belgium: Application No. 362,240, Improved Margarine Lecithin—Claims 1, 2, 3, 4, 5, 6, 7, 8.

Holland: Application No. 126,628, Improved Margarine Lecithin—Claims 1, 2, 3, 4, 5, 6, 7, 8.

EXHIBIT "B"

U. S. Patent No. 1,762,077, Egg Yolk Substitute; No. 1,776,721, Uniform Pulverulent Mixtures; No. 1,779,012, Leather Dressing; No. 1,831,728, Shortening Composition; No. 1,843,051, Baking Composition; No. 1,859,240, Food Product (Confectionery) ; No. 1,903,397, Separating Fatty Constituents; No. 1,934,005, Stable Aqueous Emulsions (Benzyl alcohol) ; No. 1,935,718, Baking Product; No. 1,938,864, Insecticidal Emulsion; No. 1,946,332, Dressing, Sizing & Softening Oil; No. 1,965,490, Making Margarine; No. 1,982,186, Frying Fat; No. 1,986,360, Thickening Material (Textile); No. 2,019,494, Flavoring Material; No. 2,020,496, Process of Dyeing; No. 2,020,517, Treatment of Textile Material; No. 2,039,739, Lecithin Nutrient Material; No. 2,115,088, Acid Phosphatide Emulsion; No. 2,181,129, Adhesive; No. 2,287,838, Confection—Claims 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15; No. 2,355,061, Turpentine Composition; No. 2,373,687, Confection; No. 2,402,690, Making Margarine.

Application No. 471,367, Treatment of glyceride oils; No. 606,716, Improved Margarine Lecithin—Claims 5, 6, 7, 8, 9, 10, 11, 12.

Canada: Patent No. 323,036, Chocolate; No. 325,961, Shortening Composition; No. 347,118, Food Product (Confection); No. 406,919, Confection Composition (Halogenated Phosph.); No. 411,090, Confection & Product—Claims 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 21, 22, 23, 24, 25, 26, 27, 28, 29.

Britain: Patent No. 528,377, Confection & Product—Claims 3, 4, 5, 6, 7, 8; Application No. 21272-46, Improved Margarine Lecithin—Claims 11, 12.

France: Application No. 518,430, Improved Margarine Lecithin—Claim 3.

Belgium: Application No. 362,240, Improved Margarine Lecithin—Claim 9.

Holland: Application No. 126,628, Improved Margarine Lecithin—Claim 9.

EXHIBIT “C”

1. Agreement dated January 1, 1940 by and between The Glidden Company, Texaco Development Corporation and The Texas Company relating to U. S. Letters Patent Nos. 2,155,678, 2,165,651 and 2,208,105 of The Texas Company and to U. S. Letters Patent No. 1,884,899 of American Lecithin Company, these patents relating to the use of lecithin in the production of gasoline.

(a) Amendment to the foregoing as of January 1, 1940 between the aforesaid corporations, bringing the following patents, within the operation of the aforesaid agreement:

Australia No. 25,165

Canada Nos. 364,658, 364,659

France No. 808,690

British No. 464,055

South Africa No. 1,166/35

2. Agreement dated April 1, 1942 by and between The Glidden Company and Texaco Development Corporation relating to U. S. Letters Patents Nos. 2,212,020, 2,212,021, 2,221,162, 2,244,416, 2,257,601, of The Texas Company and U. S. Letters Patent No. 2,374,682 and claims 5, 6 and 7 of U. S. Letters Patent No. 2,403,284 of American Lecithin Company, each of said patents relating to the use of lecithin in mineral lubricating oil.

3. Agreement between The Glidden Company and E. I. DuPont de Nemours and Company dated December 23, 1942 relating to Claim No. 21 of U. S. Letter Patent No. 2,285,854 which relates to use of lecithin in mineral lubricating oil.

4. Agreement dated September 24, 1940, between Socony-Vacuum Oil Company, Incorporated, and The Glidden Company, covering the non-exclusive right to license others under Socony-Vacuum Oil Company's Patent 2,151,300 to incorporate lecithin in lubricant composition and to use and sell lubricant composition containing lecithin.