IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA,	:	
	:	CIVIL ACTION
Plaintiff	:	
	:	NO. 11024
v.	:	
	:	Filed: March 14, 1957
JOSEPH A. KRASNOV	:	
SAMUEL KRASNOV	:	
SEYMOUR KRASNOV	:	
THE COMFY MANUFACTURING COMPANY	:	
FRED E. KATZNER and	:	
ARTHUR OPPENHEIMER, JR.,	:	
	:	
Defendants	:	

FINAL JUDGMENT

This cause came on for hearing before the Court upon the motion by the plaintiff pursuant to Rule 56 of the Federal Rules of Civil Procedure for summary judgment in its favor, counsel for the parties having been heard and the Court having determined upon consideration of the pleadings, the admissions, and exhibits on file, that there is no genuine issue between the parties as to any material fact, and the Court having filed its opinion herein on July 30, 1956 granting the motion by plaintiff for summary judgment against all the defendants;

NOW, THEREFORE, after hearing plaintiff and defendants by their attorneys, it is hereby

ORDERED, ADJUDGED AND DECREED as follows:

I

(A) "Defendants" means each and all of the parties defendants as named in the complaint in this cause;

(B) "Slip cover" means any ready-made furniture slip cover except such covers as are sold in several separate pieces and assembled by the user on chairs, sofas, davenports and the like (commonly designated as DO-IT-YOURSELF-KITS);

(C) "Person" means any individual, corporation, partnership, association or other business or legal entity;

(D) "Patents" means all United States Letters Patent relating to the manufacture, use or sale of slip covers.

II

The provisions of this Final Judgment applicable to any defendant shall apply to such defendant, its or his officers, agents, servants, employees and attorneys, and to all other persons acting or claiming to act under, through or for such defendant who shall have received actual notice of this Final Judgment by personal service or otherwise.

III

Defendants have violated Sections 1 and 2 of the Act of Congress of July 2, 1890, 15 U.S.C., Sections 1 and 2, entitled "An act to protect trade and commerce against unlawful restraints and monopolies", commonly known as the Sherman Act. Said violations have consisted of defendants engaging in an unlawful combination and conspiracy in restraint of trade and commerce in the manufacture and sale of slip covers, entering into unlawful contracts, agreements and understandings in restraint of said trade and commerce and unlawfully combining and conspiring to monopolize said trade and commerce in the manufacture and sale of slip covers.

IV

The agreement among defendants, dated October 4, 1938, and all agreements supplementary and amendatory thereto are adjudged and decreed to be unlawful and are hereby terminated; and defendants are jointly and severally enjoined and restrained from the further performance or enforcement of any of the provisions of said agreement or the agreements supplementary and amendatory thereto.

V

Defendants are jointly and severally enjoined and restrained from combining or conspiring, or from entering into, adhering to, performing, maintaining, furthering, directly or indirectly, or claiming any rights under any contract, agreement, understanding, plan or program with any other person to:

(A) Fix, maintain or adhere to the price of slip covers sold to third persons, except as provided by the "Miller-Tydings" and the "McGuire" Acts and the "Fair Trade" Laws of any State or Commonwealth;

(B) Monopolize or attempt to monopolize the manufacture, distribution or sale of slip covers.

VI

Defendants are jointly and severally enjoined and restrained from:

(A)(1) Purchasing slip covers manufactured by any other person and disposing of such slip covers in such a way as to disclose the identity of the manufacturer thereof, or (2) reselling such slip covers at prices less than wholesale and thus or otherwise disrupting the market of the manufacturer of such slip covers or creating the

impression among retailers or consumers that such slip covers are of inferior quality or workmanship;

(B) Making or causing to be made false, derogatory or disparaging statements concerning slip covers manufactured by others or false statements concerning the financial ability of any other manufacturer of slip covers;

(C) Granting to any retailer of slip covers special discounts, advertising allowances or return privileges which are not available to others on proportionately equal terms;

(D) Entering into any contract or understanding with a retailer of slip covers obligating the latter to carry exclusively slip covers manufactured by the defendant, or not to carry or deal in slip covers manufactured by others. However, this provision shall not apply to an agreement with the owner of an individual store in any city having a population (based on the last official Decennial Census) of less than 25,000 inhabitants;

(E) Entering into or enforcing any contract or understanding with any supplier of materials for slip covers obligating such supplier to refrain from manufacturing for or selling to others any such materials, except that such defendant may contract for certain fabrics and fabrics

containing certain designs or patterns for the exclusive use of the defendant;

(F) Purchasing jointly with any defendant, from any other manufacturer of slip covers, machinery usable in the manufacture of slip covers.

VII

Defendants are jointly and severally enjoined and restrained from:

(A) Instituting or threatening to institute, or maintaining or continuing any action or proceeding for acts of infringement or use or to collect damages, compensation or royalties alleged to have occurred or accrued prior to the date of this Final Judgment, under any patents owned or controlled by any defendant, except by way of set-off or counterclaim in any action brought by any third party against any defendant or defendants;

(B) Instituting, threatening to institute or maintaining any action or proceeding for acts of infringement or use of any patent owned or controlled by such defendant against any retailer of slip covers who is not also the manufacturer of the alleged infringing slip covers;

(C) Sharing with any other defendant expenses resulting from any action or proceeding for acts of infringement or use of any patent owned or controlled by any defendant;

(D) Instituting or threatening to institute any action or proceeding attacking the validity or scope of any patent for the purpose or with the effect of harassing a competitor or owner of said patent, except by way of defense, setoff or counterclaim in any action brought by any third party against any or all defendants.

VIII

This Court having found that the defendants have used patent rights unlawfully in instituting, effectuating and maintaining the illegal combinations and conspiracies and that defendants instituted and threatened to institute harassing infringement suits against competitors and retailers of slip covers, and in order to prevent such misuse of patent rights and the institution of such harassing infringement suits in the future;

(A) Each defendant is ordered and directed in so far as it has the power to do so, to grant to any applicant therefor a nonexclusive license under any, some or all of the patents owned or

controlled by such defendant at the date of entry of this Final Judgment or which are applied for or issued to or owned by such defendant within five (5) years from such date of entry, and defendants are each enjoined and restrained from making any sale or other disposition of any of the aforesaid patents which deprives such defendant of the power or authority to grant such licenses, unless such defendant 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 VIII and IX of this Final Judgment with respect to the patents so acquired, 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 with respect to the patents so acquired;

(B) Each defendant is enjoined and restrained from including any restriction or condition whatsoever in any license or sublicense, as the case may be, granted by it pursuant to the provision of this Section except that (1) the license may be made nontransferable; (2) a reasonable nondiscriminatory 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 cancellation of the license upon failure of the licensee to pay the royalty or to permit the inspection of its books and records as hereinabove provided; (5) reasonable provision may be made for marking the slip covers manufactured, used or sold by the licensee under the license with the numbers of the licensed patents covering such slip covers; and (6) the license shall provide that the licensee may cancel the license at any time by giving 30 days' notice in writing to the licensor;

(C) Upon receipt of a written request for a license or sublicense, as the case may be, under the provisions of this Section VIII, such defendant shall advise the applicant in writing of the royalty which it deems reasonable for the future 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 the license was received by such defendant, the applicant therefor may forthwith apply to this Court for the

determination of a reasonable royalty, and the defendant shall, upon receipt of notice of the filing, or upon 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 to establish the reasonableness of the royalty requested, and the reasonable royalty rates, if any, determined by this Court shall apply to the applicant and all other licensees under the same future patents. Pending the completion of negotiations or any such proceeding, the applicant shall have the right to make, use and vend under the future patents to which its application pertains without payment of royalty or other compensation as above provided, but subject to the provisions of subsection (D) of this Section VIII;

(D) Where the applicant has the right to make, use and vend under any patents pursuant to subsection (C) of this Section VIII, said applicant or the defendant may apply to this Court to fix an interim royalty rate pending final determination of what constitutes a reasonable royalty. If this Court fixes such interim royalty rate, the defendant shall then issue and the applicant shall accept a license or, as the case may be, a sub-

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 in accordance therewith, such action shall be ground for the dismissal of his application, and his rights under subsection (C) shall terminate. Where an interim license or sublicense has been issued pursuant to this subsection, reasonable royalty rates, if any, as finally determined by this Court shall be retroactive for the applicant and all other licensees under the same future patents to the date the applicant files his application with this Court;

(E) 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 future patents nor shall this Final Judgment be construed as importing any validity or value to any of said future patents.

IX

Immediately following the entry of this Final Judgment, the defendants shall mail one copy of this Final Judgment to each person with whom any of them has or had a license agreement under any patent or

patents to which Section VIII of this Final Judgment may apply, to each applicant who has in writing heretofore applied for and has not received a license to manufacture, use or sell slip covers under said patent or patents, and to each person against whom any of them has, with regard to slip covers, ever instituted or threatened in writing to institute an infringement suit under any of these patents. Defendants shall in addition, within 60 days following the entry of this Final Judgment, cause a notice of the entry of this decree and a summary of its provisions to be inserted in the principal trade journal of the slip cover industry, which notice shall run for two consecutive issues, shall be no less than one-half page in size, and shall be in a form approved by the Attorney General of the United States. Should the defendants and the Attorney General be unable to agree within 30 days from the date of this decree as to the form of such notice to be inserted, each party shall at that time submit to the Court a form of proposed insertion and the Court shall then determine its content. Within 30 days following the first insertion of the notice in said trade paper, the said defendants shall file with this Court a verified statement setting forth

the steps taken to comply with the above requirements of this Section IX.

X

For the purpose of securing compliance with this Final Judgment and for no other purpose, 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 to any defendant, made to its or his principal office, be permitted, subject to any legally recognized privilege, (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 (3) upon request the defendant shall submit such reports in writing to the Department of Justice with respect to matters contained in this Final Judgment as may from time to time be necessary to the enforce-

ment of this Final Judgment. No information obtained by the means provided in this Section 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.

XI

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, for the purpose of the enforcement of compliance therewith and for the punishment of violations thereof.

XII

Judgment is entered against defendants for all costs to be taxed in this proceeding.

Dated: March 14, 1957

/s/ Thomas J. Clary
United States District Judge