

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	Civil Action No. 42,672
)	
v.)	
)	
DYMO INDUSTRIES, INC.,)	Entered: June 15, 1967
)	
Defendant.)	
<hr/>		

FINAL JUDGMENT

Plaintiff, United States of America, having filed its complaint herein on August 3, 1964, and defendant, Dymo Industries, Inc., having filed its answer thereto denying the substantive allegations thereof; and the parties hereto, by their respective attorneys, having consented to the making and entry of this Final Judgment without trial or adjudication of any issue of fact or law herein, and without admission by any party in respect to any such issue:

NOW, THEREFORE, before the taking of any testimony and upon said consent of the parties hereto, it is hereby

ORDERED, ADJUDGED AND DECREED as follows:

I

This Court has jurisdiction of the subject matter hereof and the parties hereto. The complaint states claims against defendant upon which relief may be granted under Section 1 of the Act of

1 Congress of July 2, 1890 (15 U.S.C. §1) entitled "An Act to protect
2 trade and commerce against unlawful restraints and monopolies,"
3 commonly known as the Sherman Act, as amended, and under Section 7
4 of the Act of Congress of October 15, 1914 (15 U.S.C. §18), commonly
5 known as the Clayton Act.

6 II

7 As used herein:

- 8 (a) "Embossing tools and tape" means hand operated embossing
9 tools capable of stamping letters and figures on adhesive
10 backed plastic tape, and the tape used in said tools;
- 11 (b) "Dymo product" means any embossing tool or tape now or
12 hereafter produced or offered for sale by defendant Dymo;
- 13 (c) "Defendant" means defendant Dymo Industries, Inc., a
14 corporation organized and existing under the laws of the
15 State of California, and each subsidiary thereof;
- 16 (d) "Subsidiary" means a corporation of which defendant possesses
17 effective voting control and which is engaged in the
18 production or sale of Dymo products in the United States;
- 19 (e) "Person" means any individual, corporation, partnership,
20 association, firm or other legal entity and includes,
21 wherever applicable, any federal, state or local government
22 or agency or instrumentality thereof;
- 23 (f) "Jobber" means any person who buys any Dymo product from
24 defendant for resale to retail dealers or distributors;
- 25 (g) "Retail dealer" means any person who buys any Dymo product
26 from defendant or from a jobber for resale to the general
27 public;
- 28 (h) "Distributor" means any person who buys any Dymo product
29 from defendant or from a jobber for resale to commercial,
30
31
32

1 industrial or governmental buyers.

2 (1) "Existing patent" means any United States letters patent
3 or patent application, and any division, continuation,
4 reissue or extension thereof, relating to embossing tools
5 or tape or to processes, materials, or machinery for the
6 manufacture thereof, owned or controlled, directly or
7 indirectly, by the defendant on August 3, 1964, or under
8 which the defendant, on such date, had and now has power
9 or authority to grant licenses or sublicenses to others;
10 a list of all existing patents is attached hereto as
11 Exhibit A;

12 III

13 (A) The provisions of this Final Judgment applicable to the
14 defendant shall also be applicable to each of its officers, directors,
15 agents and employees and to each of its subsidiaries, successors and
16 assigns, and to all other persons in active concert or participation
17 with any of them who receive actual notice of this Final Judgment by
18 personal service or otherwise.

19 (B) For the purpose of this Final Judgment, defendant and its
20 subsidiaries, and its and their officers, directors and employees, or
21 any of them, shall be deemed to be one person when acting in such
22 capacity.

23 IV

24 Defendant is ordered and directed:

25 (A) Forthwith to serve a copy of this Final Judgment upon (1)
26 each member of its Board of Directors, (2) each of its principal
27 managerial officers who are not members of its Board of Directors,
28 (3) each of its sales employees or representatives who has sales
29 responsibility over a geographical area, and (4) each of the principal
30 managerial officers of each of its subsidiaries;

31 (B) Within 90 days after the date of entry of this Final Judgment
32

1 to cancel each provision of every contract or agreement between and
2 among defendant and any of its distributors, jobbers or retail dealers
3 which is contrary to or inconsistent with any provision of this Final
4 Judgment;

5 (C) Within 90 days after the date of entry of this Final Judgment
6 to furnish to each jobber, distributor and retail dealer in the United
7 States who has purchased any Dymo product from defendant within the
8 preceding 12-month period and to each person in the United States
9 currently receiving regular trade informational mailings relating to
10 any Dymo product from the defendant a letter which includes a statement
11 substantially identical in form to Exhibit B which is attached hereto
12 and made a part hereof, together with a copy of this Final Judgment;

13 (D) For a period of five (5) years after the date of the entry
14 of this Final Judgment, to furnish, without cost, to any person so
15 requesting, a copy of this Final Judgment, together with a list of
16 unexpired existing patents;

17 (E) To file with this Court and serve upon the plaintiff within
18 105 days after the date of the entry of this Final Judgment affidavits
19 as to the fact and manner of compliance with subsections (A), (B) and
20 (C) of this Section IV.

21 V

22 Defendant is enjoined and restrained from, directly or indirectly:

23 (1) Fixing, determining or approving the price or prices,
24 terms or conditions at or upon which any other person
25 may advertise for sale, sell or offer to sell any Dymo
26 product in the United States provided, however, that
27 defendant shall not be prohibited from issuing suggested
28 price lists to jobbers, distributors or retailers if
29 said list shall bear the statement, on each piece con-
30 stituting a price list, in easily legible type, that "The
31 prices set forth herein are suggested only and you are
32

- 1 free to charge whatever prices you wish in selling Dymo
2 products";
- 3 (2) Hindering, restricting, limiting or preventing, or attempt-
4 ing to hinder, restrict, limit or prevent any other person
5 from advertising for sale, selling or offering to sell any
6 Dymo product to any third person, or class of persons in
7 the United States;
- 8 (3) Limiting or restricting, or attempting to limit or restrict
9 the territory or area within which any other person may
10 advertise for sale, sell or offer to sell any Dymo product
11 in the United States;
- 12 (4) Hindering, restricting, limiting or preventing, or attempt-
13 ing to hinder, restrict, limit or prevent any other person
14 in the United States from advertising, selling or offering
15 for sale in export, or exporting any Dymo product from the
16 United States, its territories and possessions;
- 17 (5) Investigating or policing the prices, terms or conditions at
18 which, the customers to whom or territories or areas within
19 which any other person in the United States may have adver-
20 tised for sale, sold or offered to sell any Dymo product;
- 21 (6) Refusing to sell, or offer to sell or discriminating in the
22 sale of any Dymo product to any jobber, distributor or retail
23 dealer in the United States based in whole or in part on
24 prices, terms or conditions at which, or the person or persons
25 to whom, or territory or area in which any such jobber,
26 distributor or retail dealer in the United States may have
27 advertised for sale, sold or offered to sell any Dymo product;
- 28 (7) Inducing or threatening to induce or suggesting to any
29 jobber, distributor or retail dealer of Dymo products in
30 the United States to refuse to deal with any other jobber,
31 distributor or retail dealer of Dymo products.
- 32

PROVIDED, HOWEVER, THAT subject to the foregoing provisions of this Section V, defendant (a) shall not be prohibited from entering into cooperative advertising arrangements with its jobbers, distributors or retail dealers and, in performance thereof, from providing that such cooperative advertising shall otherwise be subject to the approval of the defendant, and (b) shall not be prohibited from conducting legitimate marketing studies. And provided further, that nothing in this decree shall prevent defendant Dymo from bringing actions in foreign countries to enforce such rights as it may have under the laws of such countries.

VI

(A) Defendant is enjoined and restrained from selling, offering for sale, or conditioning the sale of, any Dymo product upon, accompanied by, or pursuant to any term, condition, agreement, understanding, plan or program the purpose or effect of which is, or may be, in any manner contrary to or inconsistent with any of the provisions of Section V of this Final Judgment.

(E) Upon expiration of a period of five (5) years following the date of entry of this Final Judgment, nothing contained in this Final Judgment shall be deemed to prohibit defendant from exercising such lawful rights, if any, as it may have under the Miller-Tydings Act.

VII

(A) Defendant is ordered and directed to grant to any applicant making written request therefor, a nonexclusive license to make, have made, use and sell in the United States embossing tools and tape under any, some or all, as the applicant may choose, existing patents.

(B) (1) Any license granted by the defendant under subsection (A) of this section VII shall be nondiscriminatory and unrestricted except that such license:

- (a) May provide that a reasonable and nondiscriminatory royalty may be charged and collected;
- (b) May contain a reasonable provision for periodic reports to defendant by the

1 licensee as to the amount of royalty due
2 and payable only and no other information;
3 (c) May contain a reasonable provision for
4 periodic inspection of the books and
5 records of the licensee by an independent
6 auditor who may report to defendant only
7 the amount of royalty due and payable
8 and no other information;
9 (d) May contain a provision that the license
10 shall be nontransferable;
11 (e) May contain a reasonable provision for
12 cancellation of the license upon failure
13 of the licensee to make the reports which
14 may be required by (b) above, pay the
15 royalties due or permit the inspection of
16 its books and records as herein provided;
17 (f) Must contain a provision that the licensee
18 may cancel the license at any time by giving
19 thirty (30) days notice in writing to the
20 licensor;
21 (g) May contain a provision that the licensee
22 will mark all licensed products in accordance
23 with the provisions of U.S. Code, Title 35,
24 Section 287;
25 (C) (1) Upon receipt of any such application, defendant is
26 ordered and directed forthwith to advise said applicant
27 of the royalty it deems reasonable and nondiscriminatory
28 for the license requested in the application, and to
29 furnish said applicant with a copy of this Final Judgment.
30 If defendant and said applicant are unable to agree upon
31 what constitutes a reasonable and nondiscriminatory
32 royalty, either defendant or said applicant, with notice

1 thereof to each other and to plaintiff herein, may apply
2 to this Court for a determination of a reasonable and
3 nondiscriminatory royalty, and defendant shall make such
4 application forthwith upon request of said applicant.

5 (2) Upon application to the Court in accordance with this
6 provision and pending completion of any such proceedings,
7 said applicant, shall have the right, subject to payment
8 of interim royalties, if any, to be determined by the
9 Court, to make, have made, use and sell embossing tools
10 and tape under the patents to which said application for
11 license pertains.

12 (3) If this Court fixes such an interim royalty rate,
13 defendant shall then issue to said applicant a license
14 pursuant to subsection B(1) of this Section VII providing
15 for the periodic payment of royalties at such interim
16 rate from the date of application to this Court for a
17 determination of reasonable and nondiscriminatory
18 royalty; and whether or not such interim rate is fixed,
19 any final order by this Court may provide for such
20 readjustments, including retroactive royalties, as this
21 Court may order after final determination of a reason-
22 able and nondiscriminatory royalty; if said applicant
23 fails to accept within a reasonable time any license
24 terms determined by this Court under this subsection
25 (D) of this Section VII, or fails to pay the royalties
26 agreed upon or established by this Court, such failure
27 shall be grounds for the dismissal by this Court of
28 said applicant's license application, and as to said
29 applicant, defendant shall have no further obligation
30 or duty under this Final Judgment.

31 (D) This Final Judgment shall not prevent any person from attack-
32 ing in the aforesaid proceedings or in any other controversy the

1 validity or scope of any existing patent, nor shall this Final Judgment
2 be construed as importing any validity or value to any of said patents.

3 (E) This Section VII shall not be deemed to prohibit defendant
4 from defending or prosecuting to Final Judgment any suit or proceeding
5 by or against any person or persons other than plaintiff instituted
6 prior to, and pending on, the date of entry of this Final Judgment,
7 except that on and after such date each such person shall be entitled
8 to apply for and to receive a license in accordance with the provisions
9 of this Final Judgment.

10 (F) Defendant is enjoined and restrained from hereafter issuing
11 or granting any license under existing patents except in accordance
12 with and pursuant to this Section VII.

13 VIII

14 Defendant is enjoined and restrained from making any disposition
15 of any existing patent which deprives it of the power or authority
16 to grant the licenses or immunities required by Section VII of this
17 Final Judgment, unless, when selling, transferring or assigning any
18 of said patents or any rights thereunder, it requires, as a condition
19 of such sale, transfer or assignment that the purchaser, transferee
20 or assignee shall observe the provisions of this Final Judgment with
21 respect to said patents or rights thereunder so acquired, and the
22 purchaser, transferee or assignee files with this Court with a copy
23 to the plaintiff herein, prior to the consummation of said transaction,
24 an undertaking to be bound by the provisions of this Final Judgment
25 with respect to said patents or rights thereunder so acquired.

26 IX

27 Defendant is ordered and directed to insert in an appropriate
28 trade journal of general circulation once in each of the second,
29 fourth and sixth months following the date of entry of this Final
30 Judgment, a notice that, pursuant to this Final Judgment, it is
31 required to grant licenses under existing patents, and that upon
32 written request, a list of such patents and a copy of this Final

1 Judgment will be furnished by the defendant.

2 X

3 For the purpose of securing compliance with this Final Judgment,
4 and subject to any legally recognized privilege, duly authorized
5 representatives of the Department of Justice shall, upon written
6 request of the Attorney General or the Assistant Attorney General
7 in charge of the Antitrust Division, and on reasonable notice to
8 defendant, made through its principal office, be permitted (1) access
9 during reasonable office hours to all books, ledgers, accounts,
10 correspondence, memoranda, and other records and documents in the
11 possession or under the control of the defendant relating to any
12 of the subject matters contained in this Final Judgment, and (2)
13 subject to the reasonable convenience of defendant, and without
14 restraint or interference from it to interview officers or employees
15 of the defendant, who may have counsel present, regarding any such
16 matters; and upon such request, defendant shall submit such reports
17 in writing to the Department of Justice with respect to any of the
18 matters contained in this Final Judgment as may from time to time
19 be requested. No information obtained by the means provided in this
20 Section X shall be divulged by any representative of the Department
21 of Justice to any person, other than a duly authorized representative
22 of the Executive Branch of plaintiff, except in the course of legal
23 proceedings to which the United States of America is a party for the
24 purpose of securing compliance with this Final Judgment or as
25 otherwise required by law.

26 XI

27
28 Jurisdiction is retained for the purpose of enabling any of the
29 parties to this Final Judgment to apply to this Court at any time
30 for such further orders and directions as may be necessary or appro-
31 priate for the construction or carrying out of this Final Judgment
32 or for the modification or termination of any of the provisions

1 thereof, and for the enforcement of compliance therewith and punish-
2 ment of violations thereof.

3 Dated: June 15, 1967

4

5

6

/s/ LLOYD H. BURKE
United States District Judge

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

29

30

31

32

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32

EXHIBIT A

LIST OF EXISTING PATENTS

Patents

<u>Patented</u>	<u>Patent No.</u>	<u>Title</u>
2/23/60	2,925,625	Contrast Color Embossed Plastics and Method of Production
4/11/61	2,979,179	Tape Embossing and Label Making Machine
8/22/61	2,996,822	Contrast Color Embossed Plastic
10/31/61	3,006,451	Hand Operated Embossing Tool
5/29/62	3,036,945	Embossable Plastic Assembly
7/31/62	3,047,443	Embossing Tape
4/2/63	3,083,807	Hand Operated Embossing Device
5/28/63	3,091,318	Cutting and Punching Attachment for Embossing Tool
5/28/63	3,091,319	Tape Marking Tool and Cut-Off Mechanism
11/26/63	3,111,872	Tape Backing Stripper
4/7/64	3,127,989	Coiled Tape Magazine for Embossing Machines and the Like
5/19/64	3,133,495	Apparatus and Method for Cutting Tapes and Removing the Liner Therefrom
10/4/66	3,276,559	Embossing Tool Having Plural Triggers with Interlock Means

Applications

2/19/64	345,923	Hand Operated Embossing Tool
---------	---------	------------------------------

Design Patents

9/19/61	191,382	Tape Embossing Tool
3/26/63	194,891	Tape Embossing Machine
9/24/63	196,398	Hand Operated Tape Embossing Tool
3/10/64	197,677	Tape Embossing Tool