

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SOUTHERN DIVISION

UNITED STATES OF AMERICA,
Plaintiff,

vs.

SWITZER BROTHERS, INC.
GANTNER & MATTERN CO.,
THE FIRELURE CORPORATION,
THE SHERWIN-WILLIAMS COMPANY,
THE SHERWIN-WILLIAMS COMPANY
OF CALIFORNIA,
ABERFOYLE MANUFACTURING COMPANY,
LAWTER CHEMICALS, INC.,
ROBERT C. SWITZER,
JOSEPH L. SWITZER,
JOHN O. GANTNER, JR.,
EUGENE BURNS,
GERALD D. STRATFORD, and
W. BRUCE BECKLEY,
Defendants.

Civil Action

No. 29860

ORIGINAL
FILED
Oct. 22, 1953
With Clerk, U. S. Dist. Court
San Francisco

FINAL JUDGMENT AS TO DEFENDANTS
THE SHERWIN-WILLIAMS COMPANY AND
THE SHERWIN-WILLIAMS COMPANY OF CALIFORNIA

Plaintiff United States of America having filed its complaint herein on June 28, 1950, the consenting defendants hereto each having filed their several answers to said complaint denying the substantive allegations thereof, and the plaintiff and the defendants The Sherwin-Williams Company and The Sherwin-Williams Company of California, by their respective attorneys, having consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or of law herein and without admission by any party in respect to any such issue:

NOW, THEREFORE, before any testimony has been taken and without trial or adjudication of any issue of fact or law and upon consent of the parties aforesaid, and said consenting defendants still asserting their innocence of any violation,

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED as follows:

I

As used in this Final Judgment:

- (A) "Person" means an individual, partnership, firm, association, corporation or other legal entity;
- (B) "Defendants" means the defendants The Sherwin-Williams Company and The Sherwin-Williams Company of California and each of them;
- (C) "Switzer" means the defendant Switzer Brothers, Inc.;
- (D) "Daylight fluorescent" means a color comprised of a predominantly reflected wave band of incident visible light and, due to visible-light response, fluorescent emitted light of substantially the same wave length as the predominantly reflected wave band, said combined reflected and emitted light having a brightness and purity of hue characterized by color distinguishability at a distance beyond the perceptibility range of any subtractive color of similar hue;
- (E) "Daylight fluorescent devices", as distinguished from daylight fluorescent materials, denotes all types and kinds of end-use products, articles, and devices, without limitation, in whose manufacture, production, or processing, daylight fluorescent materials are utilized. Included among such devices which utilize daylight fluorescent coating compositions are advertising signs, billboards, posters and displays, fishing lures and tackle, aircraft and shipboard instrument boards and panels, and novelty jewelry. Included among such devices utilizing daylight fluorescent textiles are swim suits, hosiery, caps, and other garments and articles of apparel, advertising and theatrical banners, signal flags and fishing flies and other lures;
- (F) "Daylight fluorescent materials" means, for example, certain lacquers, paints, pigments, screen process inks, and other coating compositions, yarns, filaments, threads and fibers, together with cloth and

fabrics woven and made therefrom, various organic felted materials, in sheet and roll form, such as papers, cardboards, and the like, films and foils, all of which when properly applied, processed, and utilized, result in a daylight fluorescent effect.

(G) "Patents" means each and all United States Letters Patent and applications therefor, relating to daylight fluorescent materials or devices, or both;

(H) "Trademarks" means each and all trademarks and trade names, used by or registered for defendant, relating to daylight fluorescent materials or devices, or both.

II

The Court has jurisdiction of the subject matter hereof and of the parties signatory hereto. The complaint states a cause of action against the consenting 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", and under Section 3 of the Act of Congress of October 15, 1914, entitled "An Act to Supplement Existing Laws Against Unlawful Restraints and Monopolies and for other Purposes".

III

Defendants consenting to and entering into this Final Judgment are The Sherwin-Williams Company and The Sherwin-Williams Company of California. The provisions of this Final Judgment applicable to either of the said consenting defendants shall apply to such defendant and its officers, directors, agents, employees, subsidiaries, successors, and assigns, and to all other persons acting under, through or for such defendant. For the purpose of this Final Judgment the defendant The Sherwin-Williams Company and its wholly-owned subsidiary, defendant The Sherwin-Williams Company of California, and any other wholly or substantially wholly owned subsidiary, shall be deemed to be one person.

IV

Defendants are enjoined and restrained from maintaining, adhering to, claiming any rights under, reviving, adopting or enforcing any provision of the agreement between defendant Switzer Brothers, Inc. and

defendant The Sherwin-Williams Company, dated January 25, 1949 or any other agreement or understanding between the said defendants which is inconsistent with any provision of this Final Judgment.

V

Defendants are enjoined and restrained from entering into, adhering to or enforcing any agreement, understanding, plan or program with any person engaged in the manufacture of daylight fluorescent materials or devices which:

(A) Requires the use of only daylight fluorescent materials and devices manufactured or sold by the defendants or any source approved by the defendants;

(B) Restricts, limits or controls the channels through which daylight fluorescent materials or devices may be sold or distributed.

VI

Defendants are enjoined and restrained from entering into, adhering to or enforcing any agreement, understanding, plan or program with any manufacturer, distributor or user, or any other person:

(A) Not to sell to or buy from others daylight fluorescent materials or devices;

(B) Not to use, purchase or deal in daylight fluorescent materials or devices manufactured or sold by any third person;

(C) Preventing any person from competing in the manufacture, processing, distribution or sale of daylight fluorescent materials or devices.

VII

Defendants are enjoined and restrained from:

(A) Requiring any person to use only daylight fluorescent materials and devices manufactured or sold by the defendants, or by any source approved by the defendants;

(B) Conditioning the processing by defendants of daylight fluorescent materials upon any agreement or understanding restricting or

limiting the distribution, sale or use of daylight fluorescent materials or devices manufactured or owned by any person other than the defendants;

(C) Without obstructing the exercise of trademark rights, limiting, controlling or restricting the end use of daylight fluorescent materials or devices by purchasers thereof;

(D) Selling or processing, or offering to sell or process, or fixing the price for the sale of, daylight fluorescent materials or devices, upon the condition, agreement or understanding that the purchaser thereof shall not purchase, use or deal in the daylight fluorescent materials or devices, or ingredients or goods of any person other than defendants.

VIII

Defendants are enjoined and restrained from:

(A) Granting or accepting any license or sub-license or immunity under any patents upon a condition or requirement that the other party to such transaction shall agree:

(1) To manufacture, sell or use only daylight fluorescent devices of specified kinds or types;

(2) To manufacture, sell or use only such daylight fluorescent devices as may be covered by a specified patent or patents, or which are produced by or are the result of any process covered by a specified patent or patents;

(3) To adopt and to use on daylight fluorescent devices, trademarks or trade names owned or controlled by any person;

(4) To utilize in the manufacture or processing of the licensed daylight fluorescent devices only materials to be obtained from designated sources or only materials obtained from sources approved or in any way specified or designated by defendants;

(B) Granting or accepting any license under any trade-mark upon a condition or requirement that the other party to such transaction shall agree:

(1) To manufacture, sell, or use only such daylight fluorescent devices or materials as may be covered by a specified patent or patents, or which are produced by or are the result of any process covered by a specified patent or patents;

(2) To utilize in the manufacture of the licensed daylight fluorescent devices or materials only materials manufactured or processed by manufacturers or processors approved or in any way specified or designated by defendants.

(C) Granting any trade-mark license to any manufacturer, seller, or user of daylight fluorescent materials or devices which:

(1) Does not permit the trade-mark licensee to cancel the license, with or without reason or cause, upon thirty (30) days' notice to the licensor;

(2) Requires the licensee to use the licensed trade-mark on daylight fluorescent materials or devices of any given type or kind to the exclusion of other trade-marks.

IX

Nothing in this Final Judgment shall be deemed to prohibit the defendants:

(A) From issuing or maintaining a trade-mark license which requires the use of materials designated by name or manufacturer in cases where it is not possible to use any other designation and the licensee is in fact free to obtain equivalent materials from other sources;

(B) From issuing a patent license in connection with a trade-mark license; provided, the licensee, at his option, may take either a patent license or a trade-mark license;

(C) From issuing patent licenses describing the scope of the grant therein.

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 upon reasonable notice to defendants, be permitted, subject to any legally recognized privilege, (a) access, during the office hours of defendants, to all books, papers, ledgers, accounts, correspondence, memoranda and other records and documents in the possession of or under the control of defendants relating to any of the matters contained in this Final Judgment; and (b) subject to the reasonable convenience of defendants, to interview officers and employees of defendants, who may have counsel present, regarding such matters. Upon written request of the Attorney General, or the Assistant Attorney General in charge of the Antitrust Division, on reasonable notice to defendants, defendants shall submit such written reports as may from time to time be reasonably necessary to the enforcement of this Final Judgment. No information obtained by the means provided in this Section X shall be divulged by 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 Final Judgment or as otherwise provided by law.

XI

Jurisdiction is retained by this Court 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 amendment, modification, or termination of any of the provisions thereof, for the enforcement of compliance therewith and for the punishment of violations thereof.

San Francisco, California

DATED: OCTOBER 22, 1953

LOUIS E. GOODMAN
United States District Judge

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

/s/ Stanley N. Barnes
Assistant Attorney General

/s/ W. D. Kilgore, Jr.

/s/ Marcus A. Hollabaugh

/s/ Max Freeman

/s/ Lyle L. Jones

/s/ Don H. Banks

Trial Attorneys

Trial Attorneys

Attorneys for Plaintiff

/s/ T. J. McDowell
T. J. McDowell,

Attorney for Defendants