

1
2
3
4
5
6
7
8 IN THE UNITED STATES DISTRICT COURT
9 FOR THE NORTHERN DISTRICT OF CALIFORNIA
10 SOUTHERN DIVISION

11 UNITED STATES OF AMERICA,
12 Plaintiff,

13 vs.

14 SWITZER BROTHERS, INC.,
15 GANTNER & MATERN CO.,
16 THE FIRELURE CORPORATION,
17 THE SHERWIN-WILLIAMS COMPANY,
18 THE SHERWIN-WILLIAMS COMPANY OF
19 CALIFORNIA,
20 ABERFOYLE MANUFACTURING COMPANY,
21 LAWTER CHEMICALS, INC.,
22 ROBERT C. SWITZER,
23 JOSEPH L. SWITZER,
24 JOHN O. GANTNER, JR.,
25 EUGENE BURNS,
26 GERALD D. STRATFORD, and
27 W. BRUCE BECKLEY,
28 Defendants.

CIVIL ACTION
NO. 29860

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

29 FINAL JUDGMENT AS TO DEFENDANT

30 THE FIRELURE CORPORATION

31 Plaintiff United States of America having filed its complaint herein
32 on June 28, 1950, the consenting defendant hereto having filed its answer
33 to said complaint denying the substantive allegations thereof, and the
34 plaintiff and the defendant The Firelure Corporation by their respective
35 attorneys, having consented to the entry of this Final Judgment without
36 trial or adjudication of any issue of fact or of law herein and without
37 admission by any party in respect to any such issue;

1 NOW, THEREFORE, before any testimony has been taken and without trial
2 or adjudication of any issue of fact or law and upon consent of the parties
3 aforesaid, and said consenting defendant still asserting its innocence of
4 any violation,

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

6 I

7 As used in this Final Judgment:

8 (A) "Person" means an individual, partnership, firm, association,
9 corporation, or other legal entity;

10 (B) "Defendant" means the defendant The Firelure Corporation;

11 (C) "Switzer" means the defendant Switzer Brothers, Inc.;

12 (D) "Daylight fluorescent" means a color comprised of a predomi-
13 nantly reflected wave band of incident visible light and, due to visible-
14 light response, fluorescent emitted light of substantially the same wave
15 length as the predominantly reflected wave band, said combined reflected
16 and emitted light having a brightness and purity of hue characterized by
17 color distinguishability at a distance beyond the perceptibility range
18 of any subtractive color of similar hue;

19 (E) "Daylight fluorescent devices", as distinguished from daylight
20 fluorescent materials, denotes all types and kinds of end-use products,
21 articles, and devices, without limitation, in whose manufacture, production,
22 or processing, daylight fluorescent materials are utilized. Included among
23 such devices which utilize daylight fluorescent coating compositions are
24 advertising signs, billboards, posters and displays, fishing lures and
25 tackle, aircraft and shipboard instrument boards and panels, and novelty
26 jewelry. Included among such devices utilizing daylight fluorescent tex-
27 tiles are swim suits, hosiery, caps, and other garments and articles of
28 apparel, advertising and theatrical banners, signal flags and fishing
29 flies and other lures;

30 (F) "Daylight fluorescent materials" means, for example, certain
31 lacquers, paints, pigments, screen process inks, and other coating composi-
32 tions, yarns, filaments, threads and fibers, together with cloth and

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

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

8 (H) "Trademarks" means each and all trademarks and trade names,
9 used by or registered for defendant, relating to daylight fluorescent ma-
10 terials or devices, or both.

11 II

12 The Court has jurisdiction of the subject matter hereof and of the
13 parties signatory hereto. The complaint states a cause of action against
14 the consenting defendant under Sections 1 and 2 of the Act of Congress of
15 July 2, 1890, entitled "An Act to protect trade and commerce against un-
16 lawful restraints and monopolies", and under Section 3 of the Act of
17 Congress of October 15, 1914, entitled "An Act to Supplement Existing
18 Laws Against Unlawful Restraints and Monopolies and for other Purposes".

19 III

20 Defendant consenting to and entering into this Final Judgment is
21 The Firelure Corporation. The provisions of this Final Judgment applicable
22 to the said consenting defendant shall apply to such defendant and its
23 officers, directors, agents, employees, subsidiaries, successors, and
24 assigns, and to all other persons acting under, through or for such defendant.

25 IV

26 The Final Judgment heretofore entered herein as to defendant The Fire-
27 lure Corporation on August 31, 1953, is hereby vacated, nunc pro tunc, as
28 of the date thereof, and is hereby declared to be of no force or effect
29 whatsoever.

30 V

31 Agreement between the defendant The Firelure Corporation and the de-
32 fendants Eugene Burns, Gerald D. Stratford, John O. Gantner, Jr. and

1 W. Bruce Beckley, doing business under the name and style of Gabbs Supply
2 Company, dated January 21, 1949, having been terminated, defendant The
3 Firelure Corporation is enjoined and restrained from continuing and re-
4 newing said agreement.

5 VI

6 Defendant is enjoined and restrained from entering into, adhering to
7 or enforcing any agreement, understanding, plan or program with any person
8 engaged in the manufacture of daylight fluorescent materials or devices
9 which:

10 (A) Requires the use of only daylight fluorescent materials and de-
11 vices manufactured or sold by the defendant or any source approved by the
12 defendant;

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

15 VII

16 Defendant is enjoined and restrained from entering into, adhering to
17 or enforcing any agreement, understanding, plan or program with any manu-
18 facturer, distributor or user, or any other person:

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

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

23 (C) Preventing any person from competing in the manufacture, process-
24 ing, distribution or sale of daylight fluorescent materials or devices.

25 VIII

26 Defendant is enjoined and restrained from:

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

30 (B) Conditioning the processing by defendant of daylight fluorescent
31 materials upon any agreement or understanding restricting or limiting the
32 distribution, sale or use of daylight fluorescent materials or devices

1 manufactured or owned by any person other than the defendant;

2 (C) Without obstructing the exercise of trade-mark rights, limiting,
3 controlling or restricting the end use of daylight fluorescent materials
4 or devices by purchasers thereof;

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

10 IX

11 Defendant is enjoined and restrained from:

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

15 (1) To manufacture, sell or use only daylight fluores-
16 cent devices of specified kinds or types;

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

21 (3) To adopt and to use on daylight fluorescent de-
22 vices, trade-marks or trade names owned or controlled by
23 any person;

24 (4) To utilize in the manufacture or processing of
25 the licensed daylight fluorescent devices only materials
26 to be obtained from designated sources or only materials
27 obtained from sources approved or in any way specified or
28 designated by defendant.

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

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

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

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

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

15 (2) Requires the licensee to use the licensed
16 trade-mark on daylight fluorescent materials or de-
17 vices of any given type or kind to the exclusion of
18 other trade-marks.

19 X

20 Nothing in this Final Judgment shall be deemed to prohibit de-
21 fendant:

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

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

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

XI

1
2 For the purpose of securing compliance with this Final Judgment
3 and for no other purpose, duly authorized representatives of the De-
4 partment of Justice shall, upon written request of the Attorney General
5 or the Assistant Attorney General in charge of the Antitrust Division,
6 and upon reasonable notice to defendant, be permitted, subject to any
7 legally recognized privilege, (a) access, during the office hours of
8 defendant, to all books, papers, ledgers, accounts, correspondence,
9 memoranda and other records and documents in the possession of or under
10 the control of defendant relating to any of the matters contained in
11 this Final Judgment; and (b) subject to the reasonable convenience of
12 defendant, to interview officers and employees of defendant, who may
13 have counsel present, regarding such matters. Upon written request of
14 the Attorney General, or the Assistant Attorney General in charge of
15 the Antitrust Division, on reasonable notice to defendant, defendant
16 shall submit such written reports as may from time to time be reasonably
17 necessary to the enforcement of this Final Judgment. No information
18 obtained by the means provided in this Section XI shall be divulged by
19 the Department of Justice to any person other than a duly authorized
20 representative of the Department of Justice except in the course of
21 legal proceedings to which the United States is a party for the purpose
22 of securing compliance with this Final Judgment or as otherwise pro-
23 vided by law.

XII

24
25 Jurisdiction is retained by this Court for the purpose of enabling
26 any of the parties to this Final Judgment to apply to this Court at any
27 time for such further orders and directions as may be necessary or
28 appropriate for the construction or carrying out of this Final Judgment,
29 for the amendment, modification, or termination of any of the provisions
30 thereof, for the enforcement of compliance therewith and for the
31 punishment of violations thereof.
32

1 San Francisco, California

2 DATED: October 22, 1953

LOUIS E. GOODMAN
United States District Judge

3 We hereby consent to the entry of the foregoing Final Judgment.
4

5 STANLEY N. BRANES
6 Assistant Attorney General

W. D. KILGORE, JR.

7 MARCUS A. HOLLABAUGH

MAX FREEMAN

9 LYLE L. JONES

DON H. BANKS

11 Trial Attorneys

Trial Attorneys

12 Attorneys for Plaintiff

14 BOYKEN, MOHLER & BECKLEY

15 By W. BRUCE BECKLEY
16 W. Bruce Beckley

17 Attorneys for Defendant