

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,
INC., LAWTER CHEMICALS, INC., ROBERT C. SWITZER,
JOSEPH L. SWITZER, JOHN O. GANTNER, JR., EUGENE
BURNS, GERALD D. STRATFORD, and W. BRUCE BECKLEY,

CIVIL ACTION

NO. 29860

ORIGINAL

FILED

Oct. 22, 1953

With Clerk, U. S.

Dist. 100

Francisco

FINAL JUDGMENT AS TO DEFENDANT
ABERFOYLE MANUFACTURING COMPANY, INC.

Plaintiff, United States of America, having filed its complaint herein on June 28, 1950, the consenting defendant hereto having filed its answer to said complaint denying the substantive allegations thereof, and the plaintiff and the defendant Aberfoyle Manufacturing Company, Inc., 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 the said consenting defendant still asserting its 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) "Defendant" means Aberfoyle Manufacturing Company, Inc.;

(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 defendant 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."

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Defendant consenting to and entering into this Final Judgment is
Aberfoyle Manufacturing Company, Inc. The provisions of this Final
Judgment applicable to the said consenting defendant shall apply to said
defendant and its officers, directors, agents, employees, subsidiaries,
successors, and assigns, and to all other persons acting under, through
or for said defendant. For the purpose of this Final Judgment the
defendant and any wholly-owned subsidiary shall be deemed to be
one person.

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7 The agreement between defendant Aberfoyle Manufacturing Company,
8 Inc. and defendant Switzer, dated July 14, 1949, having been terminated,
9 defendant is enjoined and restrained from continuing or renewing said
10 agreement.

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V

17 Defendant is enjoined and restrained from entering into, adhering
18 to or enforcing any agreement, understanding, plan or program with any
19 person engaged in the manufacture of daylight fluorescent materials or
20 devices which:

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

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

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VI

31 Defendant is enjoined and restrained from entering into, adhering
32 to or enforcing any agreement, understanding, plan or program with any
33 manufacturer, distributor or user, or any other person:

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

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

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

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VII

46 Defendant is enjoined and restrained from:

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

(B) Conditioning the processing by defendant 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 defendant;

(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 defendant.

VIII

Defendant is 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 defendant.

(B) Granting or accepting any license under any trademark 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 defendant.

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

(1) Does not permit the trademark 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 trademark on daylight fluorescent materials or devices of any given type or kind to the exclusion of other trademarks.

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

(A) From issuing or maintaining a trademark 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 trademark license; provided, the licensee, at his option, may take either a patent license or a trademark license;

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

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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 the defendant, be permitted, subject to any legally recognized privilege, (a) access, during the office hours of defendant, to all books, papers, ledgers, accounts, correspondence, memoranda and other records and documents in the possession of or under the control of defendant relating to any of the matters contained in this Final Judgment; and (b) subject to the reasonable convenience of defendant, to interview officers and employees of defendant, 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 defendant, defendant 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.

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.

Stanley N. Barnes
Assistant Attorney General

W. D. Kilgore, Jr.

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