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8 IN THE UNITED STATES DISTRICT COURT
9 FOR THE NORTHERN DISTRICT OF CALIFORNIA
10 SOUTHERN DIVISION
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12 UNITED STATES OF AMERICA,
13 Plaintiff,

14 vs.

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

CIVIL ACTION

NO. 29860

ORIGINAL
FILED

Oct. 22, 1953

With Clerk, U. S.
Dist. Court
San Francisco

23 FINAL JUDGMENT AS TO DEFENDANT
24 ABERFOYLE MANUFACTURING COMPANY, INC.

25 Plaintiff, United States of America, having filed its
26 complaint herein on June 28, 1950, the consenting defendant hereto
27 having filed its answer to said complaint denying the substantive
28 allegations thereof, and the plaintiff and the defendant Aberfoyle
29 Manufacturing Company, Inc., by their respective attorneys, having
30 consented to the entry of this Final Judgment without trial or
31 adjudication of any issue of fact or of law herein and without admission
32 by any party in respect to any such issue;

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

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

12 (D) "Daylight fluorescent" means a color comprised of a predominantly
13 reflected wave band of incident visible light and, due to visible-light
14 response, fluorescent emitted light of substantially the same wave length
15 as the predominantly reflected wave band, said combined reflected and
16 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,
22 production, or processing, daylight fluorescent materials are utilized.
23 Included among such devices which utilize daylight fluorescent coating
24 compositions are advertising signs, billboards, posters and displays,
25 fishing lures and tackle, aircraft and shipboard instrument boards and
26 panels, and novelty jewelry. Included among such devices utilizing
27 daylight fluorescent textiles are swim suits, hosiery, caps, and other
28 garments and articles of apparel, advertising and theatrical banners,
29 signal flags and fishing flies and other lures;

1 (F) "Daylight fluorescent materials" means, for example, certain
2 lacquers, paints, pigments, screen process inks, and other coating
3 compositions, yarns, filaments, threads and fibers, together with cloth
4 and fabrics woven and made therefrom, various organic felted materials,
5 in sheet and roll form, such as papers, cardboards, and the like,
6 films and foils, all of which when properly applied, processed, and
7 utilized, result in a daylight fluorescent effect;

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

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

14 II

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

23 III

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

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

V

Defendant is 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 defendant or any source approved by the defendant;

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

VI

Defendant is 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

Defendant is enjoined and restrained from:

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

1 (B) Conditioning the processing by defendant of daylight fluorescent
2 materials upon any agreement or understanding restricting or limiting
3 the distribution, sale or use of daylight fluorescent materials or devices
4 manufactured or owned by any person other than the defendant;

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

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

13 VIII

14 Defendant is enjoined and restrained from:

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

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

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

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

28 (4) To utilize in the manufacture or processing of
29 the licensed daylight fluorescent devices only materials
30 to be obtained from designated sources or only materials
31 obtained from sources approved or in any way specified
32 or designated by defendant.

1 (B) Granting or accepting any license under any trademark upon
2 a condition or requirement that the other party to such transaction
3 shall agree:

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

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

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

16 (1) Does not permit the trademark licensee to cancel
17 the license, with or without reason or cause, upon thirty
18 (30) days' notice to the licensor;

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

22 IX

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

25 (A) From issuing or maintaining a trademark license which
26 requires the use of materials designated by name or manufacturer in
27 cases where it is not possible to use any other designation and the
28 licensee is in fact free to obtain equivalent materials from other
29 sources;
30

1 (B) From issuing a patent license in connection with a trademark
2 license; provided, the licensee, at his option, may take either a
3 patent license or a trademark license;

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

6 X

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

Marcus A. Hollabaugh

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