

[Trade Regulation Reporter - Trade Cases \(1932 - 1992\), United States v. Technicolor, Inc., Technicolor Motion Picture Corporation, and Eastman Kodak Company., U.S. District Court, S.D. California, 1948-1949 Trade Cases ¶62,338, \(Nov. 24, 1948\)](#)

Federal Antitrust Cases

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United States v. Technicolor, Inc., Technicolor Motion Picture Corporation, and Eastman Kodak Company.

1948-1949 Trade Cases ¶62,338. U.S. District Court, S.D. California, Central Division. Civil Action No. 7507-WM. November 24, 1948.

Headnote

Sherman Antitrust Act

Consent Judgment—Color Cinematography—Acts Enjoined.—A consent judgment entered in an action charging three corporations with entering into a conspiracy in restraint of trade in the business of professional color cinematography requires one of the defendants, a film manufacturer, to license all of its current patents to any applicant on a royalty-free basis, and to license all patents which it may acquire in this field during the next five years on a reasonable royalty basis. Defendant is also required to furnish technical information to all licensees and to sell professional color motion picture film to all applicants without discrimination. Defendant is enjoined from selling, licensing, processing, conducting research, disclosing inventions and technical information, or providing personnel or laboratory facilities in connection with professional color cinematography, on condition that the person with whom defendant is dealing purchase professional color motion picture film exclusively from defendant, resell such film at a price or on terms fixed by defendant, refrain from selling or manufacturing such film, or have such film processed by certain specified persons.

For plaintiff: Herbert A. Bergson, Assistant Attorney General; William C. Dixon, Sigmund Timberg, Manuel M. Gorman, Special Assistants to the Attorney General; James M. McGrath, W. Perry Epes, Nora B. Padway, Special Attorneys.

For defendant: Donovan, Leisure, Newton, Lumbard & Irvine, James R. Withrow, Jr.; Nixon, Hargrave, Middleton & Devans, Arthur L. Stern; McCutchen, Thomas, Matthew, Griffiths & Greene, George Harnagel, Jr.

Final Judgment Against Defendant Eastman Kodak Company

Plaintiff, United States of America, having filed its complaint herein on August 18, 1947, and defendant Eastman Kodak Company, by its attorneys, having appeared and filed its answer to such complaint denying the substantive allegations thereof, and having consented to the entry of this final judgment herein without trial or adjudication of any issue of fact or law herein and without admission by said defendant 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 herein and upon consent of the plaintiff, United States of America, and defendant Eastman Kodak Company, it is hereby

ORDERED, ADJUDGED, AND DECREED as follows:

I. That this Court has jurisdiction of the subject matter hereof and of defendant Eastman Kodak Company; that the complaint states a cause of action against said 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," commonly known as the Sherman Act, and acts amendatory thereof.

II. As used in this judgment:

A. "Kodak" refers to the Eastman Kodak Company, a corporation organized and existing under the laws of the State of New Jersey.

B. "Person" means any individual, partnership, firm, corporation, association, trustee, or any other business or legal entity.

C. "To process" or "processing" means to develop, duplicate, finish or print positive or negative film or prints but does not include any step or operation in connection with the manufacture of raw or unexposed film.

D. "Professional color cinematography" means:

(1) the selling and distributing of negative or positive film for use in the production of motion pictures in color, or

(2) the processing of such film, or

(3) the printing, processing, selling, and distributing of motion-picture color film prints for exhibition in theatres and for industrial, scientific, advertising, educational, and other similar purposes, but does not include any step or operation in connection with the manufacture of raw or unexposed film.

E. "Professional color motion-picture film" means negative and positive film made for and to be used in professional color cinematography.

F. "Technicolor Agreements" means the following contracts and agreements:

The agreement dated June 25, 1934, between Technicolor Motion Picture Corporation, Technicolor, Inc., and Kodak, attached to the complaint herein as Exhibit "A";

The agreement dated December 14, 1945, between Technicolor Motion Picture Corporation, Technicolor, Inc., and Kodak, attached to the complaint herein as Exhibit "B";

The agreement dated April 5, 1938, between Technicolor Motion Picture Corporation and Kodak, attached to the complaint herein as Exhibit "C";

The agreement dated January 2, 1942, between Technicolor Motion Picture Corporation and Kodak, attached to the complaint herein as Exhibit "D";

The agreement dated October 22, 1936, between Technicolor Motion Picture Corporation, Technicolor, Inc., and Kodak, attached to the complaint herein as Exhibit "E".

III. Whenever reference is made in this judgment to defendant Kodak, such reference shall also include its successors and assigns, each of its officers, directors and employees, and each of its subsidiaries. The provisions in this judgment shall apply to defendant Kodak and also to each person acting or claiming to act under the direction or for or on behalf of Kodak.

IV. A. Kodak is hereby ordered and directed to grant to each applicant making written request therefor a nonexclusive and unrestricted license, for which Kodak may receive no royalty or other compensation, conveying full rights under any, some, or all of the claims of the following United States patents relating to professional color cinematography, and all divisions, continuations, reissues, or extensions of said patents:

1,897,866	1,969,479
1,900,869	2,019,718
1,954,346	2,059,884
1,969,469	2,108,602
2,258,976	2,295,013

2,271,238	2,362,598
	2,417,060

B. Kodak is hereby ordered and directed to grant to each applicant making written request therefor a nonexclusive and unrestricted license for which Kodak may charge a non discriminatory royalty equal to but not in excess of any royalty it may be obligated to pay on account of the granting of such license, provided such obligation on the part of Kodak existed prior to July 1, 1947, conveying full rights under any, some, or all of the claims of the following United States patents relating to professional color cinematography and all reissues, divisions, continuations, or extensions of said patents:

1,954,452	2,008,989
1,980,941	2,039,691
1,997,493	2,047,282
2,143,762	2,095,826
2,191,038	2,382,604
1,976,300	2,058,409
1,912,661	1,997,325

V. Kodak is hereby ordered and directed to grant to each domestic applicant making written request therefor a nonexclusive and unrestricted license, for which Kodak may charge a reasonable nondiscriminatory royalty, conveying full rights for processing, selling or distributing professional color motion-picture film under any, some or all of the claims of United States patents, applied for by or issued to Kodak within five (5) years from the date of this judgment; any, some, or all claims of all such patents or patent applications which Kodak acquires within such five years; and any, some or all claims of all such patents or patent applications of which Kodak becomes a licensee within such five years with power to sublicense.

VI. A. Kodak is hereby enjoined and restrained from

(1) making any assignment, sale or other disposition of any of the patents referred to in Sections IV and V of this judgment which would deprive it of the power or authority to grant the licenses referred to in said Sections, unless it requires, as a condition of such assignment, sale, or other disposition, that the purchaser, transferee, or assignee, shall observe the requirements of Sections IV, V, VII, X and XI of this judgment and the purchaser, transferee, or assignee shall file with this Court, prior to consummation of said transaction, an undertaking to be bound by the provisions of said Sections of this judgment; or

(2) becoming, within five years from the date of this judgment, an exclusive licensee under any patents or patent applications for professional color cinematography, unless the license gives Kodak the power to grant sublicenses under said patents.

B. Any license granted by Kodak pursuant to the provisions of Sections IV or V of this judgment:

(1) Must refer to and identify this judgment;

(2) May provide that the license be non-transferable;

(3) Must provide that the licensee shall have the benefit of any more favorable terms granted other licensees licensed under this judgment under the same claims effective as of the time such more favorable terms are granted;

(4) Must provide that the licensee may cancel the license at any time after one year from the initial date thereof by giving thirty (30) days' notice in writing to the licensor;

(5) Where a royalty is charged, as permitted in subsection B of Section IV and Section V,

- a. may make reasonable provision for inspection of the books and records of the licensee by an independent auditor or any person acceptable to both the licensor and licensee, who shall report to the licensor only the amount of the royalty due and payable, and
- b. may make reasonable provision for cancellation of the license upon failure of the licensee to pay the royalties or to permit the inspection of his books and records as hereinabove provided.

C. Upon receipt of written request for a license under the provisions of Section V, Kodak shall advise the license applicant in writing of the royalty which it deems reasonable for the claim or claims of the patent or patents to which the request pertains. If the parties are unable to agree upon a reasonable royalty within sixty (60) days from the date such request for the license was received by Kodak, the license applicant may forthwith apply to this Court for the determination of a reasonable royalty, and Kodak shall, upon receipt of notice of the filing of such court application, promptly give notice thereof to the Attorney General. In any such court proceeding, the burden of proof shall be on Kodak to establish the reasonableness of the royalty requested by it and the reasonable royalty rates, if any, determined by the Court shall apply to the license applicant and to all other licensees under this judgment under the same claim or claims of the same patent or patents. For said sixty (60) day period, and pending the completion of any such court proceeding, the applicant shall have full rights under the said patent claim or claims to which his application under Section V pertains without payment of royalty, but subject to the final judgment and order of the court in such proceeding, and further subject to the following provision: Kodak may apply to the Court to fix an interim royalty rate pending final determination of what constitutes a reasonable royalty, if any. If the Court fixes such interim royalty rate, Kodak shall then issue and the court applicant shall accept a license, or, as the case may be, a sublicense, providing for the periodic payment of royalties at such interim rate from the date of the filing of such court application by the applicant. If the court applicant fails to accept such license or fails to pay the interim royalty in accordance therewith, such action shall be ground for the dismissal of his application and for the rescission of any and all of the applicant's rights under this subsection. Where an interim license or sublicense has been issued pursuant to this subsection, or where the applicant has exercised any right under any patent hereunder, reasonable royalty rates, if any, as finally determined by the Court shall be retroactive for the applicant and for all other licensees under this judgment under the same claim or claims of the same patent or patents, to the date the applicant files his application with the Court.

D. Nothing herein shall prevent any applicant from attacking at any time the validity or scope of any of said patents nor shall this judgment be construed as imputing any validity or value to any of said patents.

VII. Defendant Kodak is enjoined and restrained from instituting or threatening to institute, or maintaining, or continuing any action, suit, or proceeding for acts of infringement of any patent referred to in Section IV of this judgment occurring prior to the date of said judgment.

VIII. Kodak is hereby ordered and directed to furnish within a reasonable time, to each licensee who has been licensed pursuant to Sections IV and V of this judgment and who has made a written application therefor, during the term of its license:

- A. A written manual without charge describing the methods known to and used by Kodak at the date of the entry of this judgment in its practice of processing for professional color cinematography;
- B. Supplements to said manual without charge describing any changes in such methods, respectively, on January 1, 1950, and January 1, 1951;
- C. On request, by any such licensee at any time during a period of five years after January 1, 1951, supplements to said manual describing any changes in such methods applicable to the licensed patent or patents, for which supplements Kodak may charge the separate cost to Kodak directly allocable to preparing the same.

IX. A. Kodak is hereby ordered and directed, as long as it shall manufacture, sell, or deal in professional color motion picture film, to the extent that any type of such film is available, to make quantities of such type available

to any domestic user requiring such type, without discrimination among such users and in accordance with his bona fide requirements and on regularly offered prices, terms and conditions of sale.

B. In making such film available, when ever, during a period of five (5) years from the date of this judgment, Kodak is unable, for a period of four (4) successive weeks, to make deliveries to all domestic users in good faith requiring any type of such film, Kodak shall cause such type to be distributed among such users on the basis of their bona fide requirements. For the purposes of this subsection B of this Section IX, bona fide requirements shall be based on current needs rather than past purchases of professional color motion-picture film

C. Nothing contained in this Section IX shall be construed to create in any one other than the plaintiff, United States of America, rights or claims against Kodak that do not otherwise exist.

X. Except as otherwise provided for in this judgment, defendant Kodak is hereby enjoined and restrained from (a) selling or offering to sell any professional color motion-picture film; (b) licensing any patent or patents for professional color cinematography; (c) processing professional color motion-picture film; (d) under taking or conducting research and development work in professional color cinematography; (e) disclosing inventions, improvements, "know-how", and technical information and advice used and useful in professional color cinematography; or (f) providing personnel or laboratory facilities in connection with professional color cinematography, on condition that the other person or persons with whom defendant Kodak is dealing do any of the following things:

A. Purchase professional color motion-picture film exclusively or in any determinant amount or quotas from one or more specified sellers thereof, or refrain from purchasing such film from one or more specified sellers thereof;

B. Resell professional color motion-picture film at a price or on other terms, or conditions fixed by defendant Kodak;

C. Refrain from selling or renting professional color motion-picture film;

D. Restrict the use of professional color motion-picture film;

E. Refrain from manufacturing or processing professional color motion-picture film;

F. Have professional color motion-picture film processed by any one or more specified persons.

XI. Except as otherwise provided for in this judgment, defendant Kodak is hereby enjoined and restrained from entering into, adhering to, maintaining, performing, enforcing or furthering, directly or indirectly, any contract, agreement, undertaking, arrangement, or understanding with any manufacturer or processor of professional color motion-picture film whereby:

A. Defendant Kodak or any other person or persons refrains from engaging in the manufacturing, processing, use, sale, or distribution of professional color motion-picture film or leaves any person (including defendant Kodak) free from competition in any territory, field or market in the manufacturing, processing, use, sale or distribution of such film; provided, however, that this section shall not be deemed to deter mine, adjudicate or affect the legality or illegality of any grant of preferential sales or distribution rights;

B. Defendant Kodak or any other person or persons refuses to sell to any user professional color motion-picture film to be manufactured according to technical specifications supplied by such user;

C. Defendant Kodak or Technicolor, Inc., or Technicolor Motion Picture Corporation, within five years after the date of this judgment, is given the exclusive right to process professional color motion-picture film for professional color cinematography utilizing methods or materials evolved as a result of joint research in professional color cinematography unless defendant Kodak has the unlimited right to sublicense thereunder.

XII. Should this Court adjudicate the illegality of any of the provisions of any of the Technicolor agreements, as defined in this judgment, in a final judgment entered against defendants Technicolor, Inc., and Technicolor Motion Picture Corporation, defendant Kodak is hereby enjoined and restrained to the same extent and in like manner, beginning on the date of entry of such a final judgment against Technicolor, Inc., and Technicolor Motion Picture Corporation.

- A. From the further performance of such adjudged illegal provisions of any of said agreements or of any agreements amendatory thereof or supplemental thereto;
- B. From entering into, adhering to, maintaining or furthering, directly or indirectly, any contract, agreement, understanding, plan, program, or course of conduct with any person or persons for the purpose or with the effect of continuing, reviving or renewing any of such illegal provisions in any of said agreements.
- XIII. A. Nothing contained in this judgment shall prevent defendant Kodak from availing itself of the benefits of the following acts and laws, and any amendments thereto: (1) the Act of Congress of April 10, 1918, commonly called the Webb-Pomerene Act; or (2) the Act of Congress of 1937, commonly called the Miller-Tydings proviso to Section 1 of the Act of Congress of July 2, 1890, entitled "An Act to Protect Trade and Commerce Against Unlawful Restraints and Monopolies."
- B. The provisions of this judgment shall be limited to transactions in or affecting commerce as defined in [Section 1 of the Clayton Act](#).
- XIV. For the purpose of securing compliance with this judgment, and for no other purpose, and subject to any legally recognized privilege, duly authorized representatives of the Department of Justice shall, on the written request of the Attorney General, or the Assistant Attorney General in Charge of the Anti-Trust Division, and on reasonable notice to Kodak be permitted:
- A. Access, during office hours of Kodak, to all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession of or under the control of Kodak relating to any of the subject matter of this judgment;
- B. Subject to the reasonable convenience of Kodak and without restraint or interference from it, to interview officers or employees of Kodak, who may have counsel present, regarding any such matters; and upon such written request of the Attorney General or the Assistant Attorney General in Charge of the Anti-Trust Division, Kodak shall submit such reports concerning matters directly related to compliance with this judgment as may from time to time be reasonably necessary to check compliance with the provisions of this judgment or which otherwise may be directly related to matters prohibited or required to be done under the terms of this judgment, provided, however, that information obtained by the means permitted in this Section shall not be divulged by any representative of 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 in which the United States of America is a party for the purpose of securing compliance with this judgment, or as otherwise required by law.
- XV. Jurisdiction of this cause is retained by this Court for the purpose of enabling either of the parties to this judgment to apply to the Court at any time for such further orders or directions as may be necessary or appropriate for the construction or carrying out of this judgment, for the amendment, modification, or termination of any provisions thereof, the enforcement of compliance therewith, and for the punishment of violations thereof.