FILED
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U.S. District Court
Southern District of West Virginia

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
AT CHARLESTON

UNITED STATES OF AMERICA, Plaintiff, v. STANDARD ULTRAMARINE AND COLOR CO. and AMERICAN CYANAMID CO., Defendants.	Misc. Action No. 2:19-127

MOTION OF THE UNITED STATES TO
TERMINATE LEGACY ANTITRUST JUDGMENT

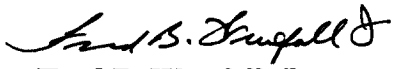
The United States moves to terminate the Final Judgment in the above-captioned antitrust case pursuant to Rule 60(b) of the Federal Rules of Civil Procedure. As explained in the accompanying Memorandum in Support of the Motion of the United States to Terminate Legacy Antitrust Judgment, the United States has concluded that because of its age and changed circumstances since its entry, this decades-old Final Judgment no longer serves to protect competition. The United States gave the public notice and the opportunity to comment on its intent to seek termination of the Final Judgment; it received no comments. For these and other reasons explained in the accompanying memorandum, the United States requests that the Final Judgment be terminated. Appendix A, a copy of the Final Judgment that the United States seeks

to terminate, is attached hereto in further support of this motion. The United States also will submit a proposed order for this motion in accordance with the Local Rules of this Court.

Dated: June 3, 2019

Respectfully submitted,

MICHAEL B. STUART
United States Attorney



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APPENDIX A

FINAL JUDGMENT

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. Standard Ultramarine and Color Company and American Cyanamid Company., U.S. District Court, S.D. West Virginia, 1954 Trade Cases ¶67,884, (Oct. 28, 1954)

United States v. Standard Ultramarine and Color Company and American Cyanamid Company.

1954 Trade Cases ¶67,884. U.S. District Court, S.D. West Virginia. Civil Action No. 739. Dated October 28, 1954. Case No. 1201 in the Antitrust Division of the Department of Justice.

Sherman Antitrust Act

Combinations and Conspiracies—Consent Decree—Practices Enjoined—Common Agents.—Producers of ultramarine blue and laundry blue consented to the entry of a decree enjoining each of them from entering into any agreement to appoint (1) a sales or distribution agent common to the other defendant or any other producer, and (2) any producer as an exclusive agent. Agreements between one of the producers and foreign companies were terminated.

Combinations and Conspiracies—Consent Decree—Practices Enjoined—Price Fixing— Exchange of Information.—Producers of ultramarine blue and laundry blue consented to the entry of a decree enjoining them (1) from entering into any agreement to fix prices or other terms or conditions for the sale of such products and (2) from disclosing to or exchanging with any such producer any information as to prices or conditions of sale, prior to the time that such prices or conditions are published and generally announced to the trade.

Combinations and Conspiracies—Consent Decree—Practices Enjoined—Allocation of Markets—Export and Import Restrictions—Referral of Orders.—Producers of ultramarine blue and laundry blue consented to the entry of a decree enjoining them from entering into any agreement (1) to allocate, reserve, or protect territories, markets, or customers and (2) to limit or restrain importation into or exportation from the United States. Also, the producers were enjoined from referring any order or inquiry to any other producer and from entering into any agreement which prevents them from selling the products to any third person.

For the plaintiff: Herbert Brownell, Jr., Attorney General; Stanley N. Barnes, Assistant Attorney General; Marcus A. Hollabaugh, Special Assistant to the Attorney General; Philip L. Roache, Jr.; Matthew Miller; W. D. Kilgore, Jr.; Charles F. B. McAleer; and Duncan W. Daugherty, United States Attorney for the Southern District of West Virginia.

For the defendants: J. J. N. Quinlan and H. L. Ducker, Huntington, W. Va., for Standard Ultramarine and Color Co.; Campbell, McNeer & Woods, by Rolla Campbell, Huntington, W. Va., and Donovan, Leisure, Newton & Irvine, by Ralstone R. Irvine (Richard Y. Holcomb, of counsel), New York N. Y., for American Cyanamid Co.

Final Judgment

HARRY E. WATKINS, District Judge [*In full text*]: Plaintiff, United States of America, having filed its complaint herein on June 29, 1954, and each of the defendants having appeared herein, and the plaintiff and the said defendants by their respective attorneys having severally consented to the making and entry of this Final Judgment without trial or adjudication of any issue of fact or law herein and without admission by any party in respect of any such issue, and the Court having considered the matter and being duly advised;

Now, therefore, before the taking of any testimony and without trial or adjudication of any issue of fact or law herein, and upon the consent as aforesaid of all the parties hereto.

It is hereby ordered, adjudged and decreed as follows:

I

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[*Sherman Act*]

This Court has jurisdiction of the subject matter hereof and of the parties hereto. The complaint states a cause of action against the defendants and each of them under Section 1 of the Act of Congress of the 2nd of July, 1890, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," commonly known as the Sherman Act, as amended.

II

[*Definitions*]

As used in this Final Judgment:

(A) "Ultramarine Blue" means any of a group of inorganic colored pigments which consist of combinations of silica, alumina, soda and chemically combined sulfur and which have colors ranging from a green shade of blue to a strong red shade of blue;

(B) "Person" means any individual, partnership, firm, corporation, association or other business or legal entity;

(C) "Laundry Blue" means a mixture of ultramarine blue and other chemicals usually combined together and manufactured and sold for use in home and commercial laundries, launderettes and for other uses;

(D) "Manufacturer" means any manufacturer of ultramarine blue or laundry blue;

(E) "Suco" means the defendant Standard Ultramarine & Color Co., a West Virginia corporation;

(F) "Calco" means the defendant American Cyanamid Company, a Maine corporation;

(G) '"Reckitt" means Reckitt & Colman Ltd., a company organized and existing under the laws of the United Kingdom with business offices at Hull, England. Reckitt & Colman Ltd. is the successor to Reckitt and Sons Limited whose offices were situated at Hull, England;

(H) "Destree" means S. A. Des Usines Destree, a company organized and existing under the laws of Belgium, with business offices at Haren, Belgium. Destree is a subsidiary of Reckitt;

(I) "United States" means the Continental United States of America, its territories and possessions.

III

[*Applicability*]

The provisions of this Final Judgment applicable to a defendant shall apply to such defendant, its officers, agents, servants, employees and attorneys, and those persons in active concert of participation with any defendant who receive actual notice of this Final Judgment by personal service or otherwise. There are expressly excluded from this Final Judgment transactions solely between a defendant and any wholly owned subsidiary or subsidiaries thereof.

IV

[*Agreements Terminated*]

(A) Defendant Suco is ordered and directed to terminate and cancel, within 10 days from the effective date of this Final Judgment, each of the following agreements which shall not theretofore have been terminated or cancelled:

(1) Agreements made on October 1, 1932, between Suco and Reckitt, and all written or oral agreements amending or modifying this agreement;

(2) All written or oral agreements or understandings made between Suco and Reckitt, between Suco and Destree, and between Suco and Reckitt which included Destree as a party by virtue of its corporate relationship to Reckitt, which agreements or understandings have intended or have had the effect of carrying out or enforcing any of the acts prohibited in this Final Judgment.

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(B) Defendant Suco is enjoined and re strained from entering into, adopting, per forming, adhering to, maintaining or furthering, directly or indirectly, or claiming any rights under any contract, agreement, understanding, plan or program, which has as its purpose or effect the continuing or renewing of any provision of any of the agreements listed in subsection (A) of this section which is inconsistent with any provision of this Final Judgment.

V

[*Referral of Orders and Exchange of Information*]

Defendants Suco and Calco are jointly and severally enjoined and restrained from:

(A) Referring or causing to be referred any order or inquiry for ultramarine blue or laundry blue to any other manufacturer, or to any agent, representative or distribu tor of any other manufacturer;

(B) Disclosing or communicating to or exchanging with any manufacturer, or any manufacturer's agent, representative or distributor (except in connection with a bona fide order or proposed order of manufacture, purchase or sale, between defendants Suco or Calco and such manufacturer, or such manufacturer's agent, representative or distributor), any information as to prices or terms or conditions of sale or proposed sale of ultramarine blue or laundry blue, prior to the time that such price or prices, terms or conditions are published and generally announced to the trade.

VI

[*Common Sales Agents*]

Defendant Calco is enjoined and restrained from entering into, adhering to or claiming any right under any contract, agreement or understanding with Suco or with any other manufacturer, its agent, representative or distributor, to require, appoint, designate, employ, use or continue the requirement, appointment, designation, employment or use of:

(A) A sales or distribution agent or representative common to defendant Calco and any such manufacturer, or any other manufacturer, for the sale or distribution of ultramarine blue or laundry blue in the United States;

(B) Any such manufacturer or any other manufacturer as the exclusive agent, sales representative or distributor of defendant Calco for the sales or distribution of ultra marine blue or laundry blue in the United States;

(C) Defendant Calco as the exclusive agent, sales representative or distributor of ultramarine blue or laundry blue in the United States for any such manufacturer or any other manufacturer.

VII

Defendant Suco is enjoined and restrained from intering into, adhering to or claiming any right under any contract, agreement or understanding with Calco or with any other manufacturer, its agent, representative or distributor, to require, appoint, designate, employ, use or continue the requirement, appointment, designation, employment or use of:

(A) A sales or distribution agent or representative common to defendant Suco and Calco or any such manufacturer or any other manufacturer for the sale or distribu tion of ultramarine blue or laundry blue;

(B) Calco or any such manufacturer or any other manufacturer as the exclusive agent, sales representative or distributor of defendant Suco for the sales or distribution of ultramarine blue or laundry blue;

(C) Defendant Suco as the exclusive agent, sales representative or distributor of ultramarine blue or laundry blue for Calco or any such manufacturer or any other manufacturer.

VIII

[*Price Fixing and Other Practices*]

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Defendants Suco and Calco are jointly and severally enjoined and restrained from entering into, adhering to or claiming any rights under any contract, agreement or understanding with each other or with any other manufacturer, or its agent, representative or distributor, to:

(A) Allocate, divide, reserve or protect territories, markets or customers for the manufacture, sale or distribution of ultra marine blue or laundry blue;

(B) Eliminate, limit, restrain or prevent competition, or leave any person free from competition, in the manufacture, sale or distribution of ultramarine blue or laundry blue;

(C) Limit, restrain or prevent importation into or exportation from the United States of ultramarine blue or laundry blue;

(D) Fix, determine, establish, maintain or adhere to prices, discounts or other terms or conditions for the sale of ultramarine blue or laundry blue to any third person.

IX

[*Sales to Third Persons*]

Defendants Suco and Calco are jointly and severally enjoined and restrained from entering into any contract, agreement or understanding with each other or with any other manufacturer which prevents any of the parties from selling ultramarine blue or laundry blue to any third person.

X

[*Permissive Provision*]

Nothing contained in this Final Judgment shall prevent any defendant from availing itself of its rights, if any, under the Act of Congress of the 10th day of April, 1918, popularly known as the "Webb-Pomerene Act," the Act of Congress of the 17th day of August, 1937, popularly known as the "Miller-Tydings Act," and the Act of Congress of the 14th day of July, 1952, popularly known as the "McGuire Act."

XI

[*Notice of Judgment*]

Defendant Suco is ordered and directed to send, within sixty days from the effective date of this Final Judgment:

(A) A copy thereof to each person who is a party to an agreement, the termination and cancellation of which is ordered in Section IV of this Final Judgment.

(B) Notification in writing, informing as to the purpose and effect of Sections IV, V, VII and VIII of this Final Judgment, to those of its agents, representatives or distributors engaged in the sale or distribution of ultramarine blue or laundry blue, and the necessity for compliance therewith.

XII

[*Inspection and Compliance*]

For the purpose of securing compliance with this Final Judgment 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 on reasonable notice to any defendant, made to its principal office, be permitted, (a) access during the office hours of said defendant to all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of said defendant relating to any matters contained in this Final Judgment, and (b) subject to the reasonable convenience of said defendant and without restraint or interference from it to interview officers or employees of said defendant, who may have counsel present, regarding any such matters.

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Upon such request the said defendant shall submit such reports in writing to the Department of Justice with respect to matters contained in this Final Judgment as may from time to time be necessary to the enforcement of this Final Judgment. No information obtained by the means provided in this Section XII shall 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 court of legal proceedings to which the United States is a party for the purpose of securing compliance with this Final Judgment or as otherwise required by law.

XIII

[*Retention of Jurisdiction*]

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 construction or carrying out of this Final Judgment, for the amendment or modification of any of the provisions thereof, for the enforcement of compliance therewith, and for the proper punishment of violations thereof.

XIV

[*Effective Date*]

This Final Judgment shall become effective thirty days from the date of its entry.

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