

CIV. NO. 126-225

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

vs

CHEMICAL SPECIALTIES CO., INC., ET AL.

FINAL JUDGMENT

RICHARD B. O'DONNELL,
Attorney, Department of Justice
Room 235 - U. S. Court House,
Foley Square,
New York 7, N. Y.

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	CIVIL ACTION NO. 126-225
)	
CHEMICAL SPECIALTIES CO., INC.,)	Filed: November 5, 1958
AMERICAN STEROIDS, INC., SYNTEX,)	
S. A., and OGDEN CORPORATION,)	
)	
Defendants.)	

FINAL JUDGMENT

Plaintiff, United States of America, having filed its complaint herein on November 1, 1957, the defendants having respectively appeared and filed their separate answers to such complaint denying the substantive allegations thereof, and the plaintiff and the defendants, by their respective attorneys herein, having severally consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law herein, and without admission by any party hereto in respect of any issue of fact or law herein.

NOW, THEREFORE, before any testimony has been taken herein, and without trial or adjudication of or any admission with respect to 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

This Court has jurisdiction of the subject matter herein and of all the parties hereto. The complaint states claims upon which relief may be granted against the defendants, and each of them, under Sections 1, 2 and 3 of the Act of Congress of July 2, 1890, entitled "An act to protect trade and

commerce against unlawful restraint and monopolies," commonly known as the Sherman Act, as amended, and Section 73 of the Act of Congress of August 27, 1894, as amended, commonly known as the Wilson Tariff Act.

II

As used in this Final Judgment:

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

(B) "Barbasco root" means the vegetable root of the dioscorea family of vegetation and which is sometimes used as a starting material in the manufacture of hormones and intermediates;

(C) "Hormones" means synthetic steroid hormones produced from barbasco root and includes synthetic cortical hormones and synthetic male and female sex hormones;

(D) "Intermediates" means various chemical substances which result at particular stages in the production of hormones from barbasco root;

(E) "United States" includes the United States of America, its territories and possessions;

(F) "Patents" means any United States and Mexican Letters Patent and all reissues, continuations, divisions or extensions thereof.

III

The provisions of this Final Judgment applicable to any defendant shall apply to each such defendant, its subsidiaries, successors, officers, directors, employees and agents and to all persons in active concert or participation with any of the foregoing who shall have received actual notice of this Final Judgment by personal service or otherwise, but shall not apply to transactions solely between companies affiliated through common ownership or control.

IV

Defendants are jointly and severally enjoined and restrained from, directly or indirectly:

(A) Preventing or attempting to prevent, except in the exercise of such valid rights as it may have under the patent laws of the United States, any person from importing into or exporting from the United States barbasco root, intermediates or hormones;

(B) Preventing or attempting to prevent any person from obtaining supplies of barbasco root;

(C) Preventing or attempting to prevent collectors of barbasco root from selling such root to any person; nothing in this subsection (C), however, shall prevent any defendant from entering into or enforcing contracts with such collectors for the purchase of barbasco root provided such contracts are for specific amounts and cover specific periods and are reasonably related to the bona fide requirements of said defendant;

(D) Offering or paying artificially high prices for barbasco root in any area in which any person obtains or is seeking to obtain supplies of such root;

(E) Procuring or attempting to procure regulations, orders or actions from any government or agency thereof which prevent any person from obtaining or exporting supplies of barbasco root, intermediates or hormones;

(F) Selling or offering to sell intermediates or hormones at unreasonably low prices to any customers or potential customers of any other person located in the United States;

(G) Refusing to sell hormones or intermediates to any person unless such person agrees not to sell to any customer in the United States or not to export from the United States;

(H) Imposing or attempting to impose in any sale by any defendant any restriction on the use or resale of hormones or intermediates in the United States;

(I) Selling or attempting to sell hormones or intermediates on the condition or understanding that the purchaser thereof (1) not deal in such products of any other person or (2) buy all or any portion of his requirements of such products from any defendant;

(J) Urging, suggesting or coercing, or attempting to urge, suggest or coerce, any person to refrain from selling hormones or intermediates in the United States at prices lower than prices charged by any defendant;

(K) Threatening or harassing any person with patent litigation for the purpose or with the effect of inducing such person to agree to limit production of hormones or intermediates, or to sell hormones or intermediates in the United States only at artificially high prices or at prices fixed or suggested by any defendant.

V

The defendants are jointly and severally enjoined and restrained from entering into any agreement, understanding, combination or conspiracy with any person to do any of the acts enjoined under Section IV hereof.

VI

Defendants are enjoined and restrained from entering into, maintaining, adhering to, enforcing or claiming any rights under any contract, agreement, understanding, plan or program to:

(A) Limit or curtail except pursuant to the lawful order of any government the collection or production of barbasco root, intermediates or hormones;

(B) Refrain from selling barbasco root, intermediates or hormones to any person or category of persons except pursuant to (a) the lawful order of any government, or (b) a lawful restriction against such sale imposed upon a defendant by a patent owner other than a defendant;

(C) Fix, establish, determine, maintain or adhere to any prices or other terms or conditions for the sale of barbasco root, intermediates or hormones to third persons.

VII

Each defendant is ordered and directed, in so far as it now has, or may hereafter acquire the power or authority to do so, to grant to any applicant making written request therefor, an unrestricted and non-exclusive license to make, use and vend under any, some or all patents listed in Schedule A attached to this Final Judgment and made a part hereof; provided, however, a uniform, reasonable and non-discriminatory royalty may be charged and collected upon any license so issued.

VIII

Defendants are jointly and severally enjoined and restrained from instituting any proceeding, judicial or administrative, for acts of infringement of, or for damages, royalties or other compensation based upon the use of any patents listed in Schedule (A) to this Final Judgment alleged to have occurred prior to the date of entry of this Final Judgment; provided, however, that this Section VIII shall not be construed to prohibit a defendant from instituting any suit or proceeding for the protection or collection of such legal rights as it may have based upon or arising from an infringement of Mexican Patent No. 45815 which infringement shall have been adjudicated or determined by a court of competent jurisdiction prior to August 1, 1958.

IX

Without determining, adjudicating or affecting the legality under the Sherman Act or the Wilson Tariff Act of the activities hereinafter referred to in this Section IX, the provisions of this Final Judgment shall not be deemed to prevent any defendant, its officers, agents or employees from freely presenting its views to officials of any government so long as such presentation is based upon actual facts or expert opinion and so long as any defendant does not use such presentation as a device for attempting to monopolize or monopolizing the manufacturing, processing, purchasing, sale, distribution or importation into or exportation from the United States of hormones and intermediates.

X

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.

(C) Upon such written request the 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 said Final Judgment. No information obtained by the means provided in this Section X shall be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of such Department, 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 required by law.

XI

Jurisdiction is retained for the purpose of enabling any of the parties to this Final Judgment to apply to the 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 or for the termination or modification of any of the provisions thereof, and for the purpose of the enforcement of compliance therewith and the punishment of violations thereof.

Dated: November 5, 1958

Judgment entered November 5, 1958.

/s/ Herbert Charlson
Clerk

/s/ Irving R. Kaufman
United States District Judge

We hereby consent to the making and entry of the foregoing Final Judgment.

FOR THE PLAINTIFF:

/s/ Victor R. Hansen
Assistant Attorney General

/s/ Harry N. Burgess

/s/ W. D. Kilgore, Jr.

/s/ Charles F. B. McAleer

/s/ William J. Elkins

/s/ Baddia J. Rashid

/s/ Bernard Wehrmann

/s/ Richard B. O'Donnell

/s/ Edward F. Corcoran

/s/ John D. Swartz
Attorneys for the Plaintiff

/s/ Agnes T. Leen
Attorneys for the Plaintiff

FOR THE DEFENDANTS:

Chemical Specialties Co., Inc.
(Presently Syntex Chemical Company, Inc.)
American Steroids, Inc., Syntex, S. A.
and Ogden Corporation

By: /s/ Howard M. Holtzmann
Howard M. Holtzmann

HOLTZMANN, WISE & SHEPARD
Attorneys for Defendants

Office and Post Office Address:

30 Board Street
New York 4, New York

SCHEDULE A

TO FINAL JUDGMENT

(Civil Action No. 126-225)

<u>United States</u> <u>Patents</u>	<u>Mexican Patents</u>
2,511,011	45,815
2,535,073	45,095
2,555,344	46,673
2,575,840	48,753
2,584,159	49,619
2,588,294	50,063
2,596,562	50,064
2,609,378	50,065
2,659,742	50,067
2,671,092	54,846
2,671,793	55,874
2,676,174	56,158
2,697,108	56,160
2,698,854	57,222
2,702,297	57,353
2,705,237	57,354
2,705,719	57,355
2,782,193	57,356
2,786,855	57,357
2,791,592	57,358
2,802,839	57,359
2,812,285	57,360
2,827,469	57,609
	57,631
	57,759
	57,781
	58,055
	58,286
	58,287
	58,409