

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- X
UNITED STATES OF AMERICA, :
 :
 Plaintiff, :
 :
 v. : 74 Civil 1712 EW
 :
 COPPER DEVELOPMENT ASSOCIATION : FINAL JUDGMENT
 INC.; :
 ANACONDA AMERICAN BRASS COMPANY; :
 NATIONAL DISTILLERS AND CHEMICAL :
 CORPORATION; :
 CERRO CORPORATION; :
 CHASE BRASS AND COPPER CO., :
 INCORPORATED; :
 MUELLER BRASS CO.; :
 NIBCO INC.; :
 PHELPS DODGE INDUSTRIES, INC.; :
 READING INDUSTRIES, INC.; :
 REVERE COPPER AND BRASS, :
 INCORPORATED; :
 SCOVILL MANUFACTURING COMPANY; :
 and :
 TRIANGLE INDUSTRIES, INC., :
 :
 Defendants. :
----- X

Plaintiff, United States of America, having filed its complaint herein on April 17, 1974, and the parties by their respective attorneys having consented to the entry of this Final Judgment without trial or adjudication of any issues of fact or law, and without this Final Judgment constituting any evidence against or admissions by any party with respect to any such issues;

NOW, THEREFORE, without trial or adjudication of, or the taking of any testimony with respect to, any issue of fact or law, and upon the consent of the parties hereto, it is hereby

ORDERED, ADJUDGED, AND DECREED as follows:

I

The Court has jurisdiction of the subject matter of this action and of the parties hereto. The complaint states a claim upon which relief may be granted against the defendants under Section 1 of the Act of Congress of July 2, 1890 (15 U.S.C. § 1), commonly known as the Sherman Act, as amended. Entry of this judgment is in the public interest.

II

As used in this Final Judgment:

(A) "Sovent Patents" shall mean United States Letters Patent No. 3,287,885 entitled "Air Separator for Drain Pipes" issued November 29, 1966 and United States Letters Patent No. 3,346,887 entitled "Sanitary Drain Systems, Method, and Fittings Therefor" issued October 17, 1967, and any continuations, reissues, or divisions thereof.

(B) "Sovent Improvement Patents" shall mean any United States Letters Patent covering any invention which is an improvement upon the claims contained in the Sovent Patents which is issued within five (5) years of the date of this Final Judgment.

(C) "Technical Data" shall mean all written information, including production manuals, drawings, and photographs, describing the manufacture or production of the aerator and deaerator fittings covered by the Sovent Patents which information is in the possession of a defendant as of the date of this Final Judgment.

III

The provisions of this Final Judgment applicable to a defendant shall also apply to each of its subsidiaries, successors, and assignees, and to their officers, directors, agents, and employees, and to all persons in active concert or participation with any of them who receive actual notice of this Final Judgment by personal service or otherwise, provided that said provisions shall not apply to transactions between any person to whom this Final Judgment applies and its parent, subsidiaries, or affiliates, or the officers, directors, or employees of any of them.

IV

Each defendant is enjoined and restrained from entering into any combination, agreement, or understanding with any other defendant or future owner of any interest in the Sovent Patents in any way limiting, prohibiting, or restraining the licensing or assignment of any of the Sovent Patents.

V

Each defendant, other than Copper Development Association, Inc., is ordered, insofar as it has the power and authority to do so, to grant to any person making written application therefor a non-exclusive, non-transferable, and non-discriminatory license to practice any, some, or all of the inventions covered by the Sovent Patents and Sovent Improvement Patents for the full unexpired term of such Patent or Patents, cancellable by the licensee upon thirty (30) days written notice to the licensor, without any other condition or limitation except:

(A) A reasonable royalty payment to be agreed upon by the licensor and the applicant for the license (or, in the absence of agreement, to be determined by this Court

upon the application of such applicant with reasonable written notice of such application to the licensor) may be charged and collected, except that in the case of the Sovent Patents such royalty shall not exceed the rate of royalty which defendants are required to pay to the assignors of the rights to such Patents under an agreement, dated as of January 1, 1965 (the "1965 Agreement"), namely three (3) percent of the net selling price (as defined in the 1965 Agreement) of all aerator and deaerator fittings sold by the licensee and covered by or intended for use in a system covered by the claims of the Sovent Patents;

(B) With respect to the licensing of the Sovent Patents, provision may be made for the payment of reasonable administrative expenses actually incurred by the licensor in granting and administering the license;

(C) Reasonable provisions may be made for periodic royalty reports by the licensee, including such reports as may be necessary to allow the licensor to fulfill its obligations under the 1965 Agreement, and for inspection of the relevant books and records of the licensee by an independent auditor or other person acceptable to both licensor and licensee (or, in the absence of agreement, a person selected by this Court), who shall report to the licensor only the amount of the royalty due and payable;

(D) Reasonable provision may be made for cancellation of the license upon failure of the licensee to comply with the material terms of said license; and

(E) Reasonable provisions may be made for marking the products manufactured, used, or sold by the licensee under the license with the number of the Sovent Patent or Sovent Improvement Patent covering such products under which the licensee is licensed.

VI

Each defendant, other than Copper Development Association, Inc., is ordered to provide Technical Data under a license to any person who at the time is licensed by any defendant pursuant to Section V hereof, within thirty (30) days after receipt of a written request therefor from such person, without any limitation or condition whatsoever except that:

(A) A reasonable and non-discriminatory fee, including the actual cost of preparing, reproducing, and delivering Technical Data pursuant to this Section VI, to be agreed upon by the licensor and the applicant for the license (or, in the absence of agreement, to be determined by this Court upon the application of such applicant with reasonable written notice of such application to the licensor) may be charged and collected for the Technical Data;

(B) The licensee may be required to enter into an agreement to hold the Technical Data confidential so long as the Technical Data is not otherwise in the public domain and not to communicate such Technical Data to any person, including any other defendant, except for any person who agrees to be bound by such agreement and who manufactures or produces the Sovent aerator or deaerator fittings solely for such licensee, and reasonable provisions may be included to insure compliance with any such agreement;

(C) Reasonable provision may also be made for cancellation of the license of Technical Data upon failure of the licensee to comply with any of the material terms of such license.

VII

Nothing herein shall prevent any applicant from attacking the validity or scope of any of the Sovent Patents or the Sovent Improvement Patents, nor shall this Final Judgment be construed as imputing any validity to any of said Patents.

VIII

Each defendant, other than Copper Development Association, Inc., is enjoined and restrained from making any sale or other disposition of any Sovent Patent or Sovent Improvement Patent which deprives it of the power or authority to grant licenses in accordance with the provisions of this Final Judgment, unless the purchaser, transferee, or assignee of such Patent shall file with this Court, prior to the consummation of said transaction, an undertaking to assume the obligations of the defendant under this Final Judgment.

IX

Within ninety (90) days of the date of this Final Judgment. (a) defendant Copper Development Association, Inc. is ordered and directed to publish notice of the availability of licenses under the Sovent Patents and of the Technical Data referred to in Sections V and VI hereof in one issue of Copper Topics, published by Copper Development Association Inc., (b) defendants, other than Copper Development Association, Inc., are ordered and directed to publish notice of such availability in one issue of DE Journal, published by the Construction Industry Press, Inc., Briar Cliff Manor, New York, and (c) each defendant is ordered and directed to give notice in writing of such availability to

each person who since January 1, 1965 has indicated in writing to such defendant an interest in obtaining a license under the Sovent Patents.

X

(A) For the purpose of determining or securing compliance with this Final Judgment and for no other purpose, each defendant shall permit duly authorized representatives of the Department of Justice, upon reasonable notice in writing from the Attorney General or the Assistant Attorney General in charge of the Antitrust Division to such defendant at its principal office, subject to any legally recognized privilege:

(1) To have access during the office hours of such defendant to those books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of such defendant, which may have counsel present, which relate to any matters which are provided for in this Final Judgment; and

(2) Subject to the reasonable convenience of such defendant and without restraint or interference from it, to interview its officers or employees, who may have counsel present, regarding any such matters.

(B) Upon written request of the Attorney General or Assistant Attorney General in charge of the Antitrust Division, each defendant shall submit such reports in writing, with respect to any matters contained in this Final Judgment, as may from time to time be requested;

(C) 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 the Executive Branch of the United States 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 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 modification of any of the provisions hereof, for the enforcement of compliance herewith, and for the punishment of violations hereof.

W. Edward Weinfeld
UNITED STATES DISTRICT JUDGE

Dated: 10/2/75