

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA, )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 CIBA CORPORATION, )  
 GEIGY CHEMICAL CORPORATION, )  
 CIBA LIMITED, J.R. GEIGY, S.A., )  
 and GEIGY INTERNATIONAL A.G. )  
 )  
 Defendants. )

Civil No. 70 Civ. 3078

Equitable Relief Sought

Filed: July 17, 1970

COMPLAINT

The United States of America, plaintiff, by its attorneys, brings this civil action to obtain equitable relief against the above-named defendants, and complains and alleges as follows:

I. JURISDICTION AND VENUE

1. This Complaint is filed and this action is instituted against defendants under Section 15 of the Act of Congress of October 15, 1914, as amended, 15 U.S.C. § 25, commonly known as the Clayton Act, in order to prevent and restrain violation by defendants, as hereinafter alleged, of Section 7 of said Act.

2. Each of the defendants is found and transacts business in the Southern District of New York.

II. DEFENDANTS

3. CIBA Corporation (hereinafter "CIBA") is named a defendant herein. Said defendant is a corporation organized and existing under the laws of the State of Delaware, with its

principal place of business in Summit, New Jersey. The common stock of defendant CIBA, except for nominal holdings, is registered in the name of certain individuals as nominees and custodians for CIBA Limited.

4. CIBA Limited is named a defendant herein. Said defendant is a corporation organized and existing under the laws of Switzerland and has its principal offices in Basle, Switzerland.

5. In 1968, CIBA had United States sales of \$143 million, amounting to about 23% of total worldwide sales of \$617 million for all companies in the CIBA Limited family. CIBA Limited has affiliates engaged in manufacturing or marketing in 39 countries.

6. Geigy Chemical Corporation (hereinafter "Geigy") is named a defendant herein. Said defendant is a corporation organized and existing under the laws of the State of New York with its principal place of business in Ardsley, New York.

7. All of the outstanding stock of Geigy is beneficially owned by a Swiss firm, J.R. Geigy, S.A., through a wholly owned Swiss subsidiary, Geigy International A.G.

8. J.R. Geigy, S.A. and Geigy International A.G. are named defendants herein. Said defendants are corporations organized and existing under the laws of Switzerland, and each has its principal offices in Basle, Switzerland.

9. In 1968, defendant Geigy had sales of \$280 million, amounting to about 45% of total worldwide sales of \$624 million for all companies in the J.R. Geigy, S.A., family. J.R. Geigy, S.A., has affiliates engaged in manufacturing or marketing in 29 countries.

### III. TRADE AND COMMERCE

#### Dyestuffs

10. Dyestuffs are colored substances which, when prepared in a suitable bath, are capable of imparting their color to vegetable, animal and artificial fibres and products. Dyestuffs, as opposed to pigments, are soluble in the vehicle in which used.

11. Most sales of dyestuffs are made directly to the consuming industry. About 80-85% of total sales are to the textile industry, about 10-15% to the paper industry and most of the remainder to the leather industry. Dyestuffs are manufactured in numerous forms, concentrations, grades and colors to fit the requirements of the purchaser.

12. Toms River Chemical Corporation (hereinafter "Toms River") is a corporation organized and existing under the laws of the State of Delaware with its principal place of business in Toms River, New Jersey. Defendant CIBA owns 58% of the common stock of Toms River and defendant Geigy owns 21%. The remainder of the outstanding Toms River common stock is beneficially owned by Sandoz, Ltd., a Swiss firm located in Basle, Switzerland.

13. Toms River is engaged in the manufacture of dyestuffs exclusively for the benefit of defendants CIBA and Geigy and a subsidiary of Sandoz, Ltd., Sandoz, Inc., a New York corporation. Each of these three companies sells the dyestuffs under its own brands and through its own marketing organizations. Both CIBA and Geigy purchase about 60% of their requirements from Toms River. The balance of the dyestuffs resold by CIBA and Geigy are obtained from their respective Swiss parents and from domestic dyestuffs manufacturers.

14. The total United States sales of dyestuffs in 1968 were about \$296.6 million. The approximate market shares held by CIBA and Geigy in 1968 were 7.7% and 10.3%, respectively. The eight largest sellers of dyestuffs in the United States account for about 65% of the market, and CIBA and Geigy are among them.

15. Substantial quantities of these products are sold and shipped in interstate trade and commerce by Toms River to CIBA and Geigy, and by CIBA and Geigy from their sales offices and storage and mixing facilities located in various states to customers located in other states.

#### Optical Brightening Agents

16. Optical Brightening Agents (hereinafter "OBAs") are principally used to brighten white color. About 65% of total OBAs sales are to laundry products manufacturers and about 20% to the textile industry.

17. About 90% of OBAs sold to the laundry products industry were for use in detergents. In 1968, total United States sales of detergent OBAs were approximately \$32 million. Geigy accounted for about 50% of total sales; CIBA accounted for about 6%.

18. Sales of OBAs to the textile industry in 1968 totaled approximately \$12.5 million. Geigy accounted for about 10% of total sales; CIBA accounted for about 19%.

19. Geigy manufactures OBAs at facilities at McIntosh, Alabama and Cranston, Rhode Island. CIBA manufactures OBAs at its facilities in Toms River, New Jersey. Substantial quantities

of these products are sold and shipped in interstate trade and commerce by CIBA and Geigy from their respective manufacturing facilities to customers located in other states of the United States.

#### Ethical Pharmaceuticals

20. Oral diuretics cause increased production of urine and increased excretion of salt in urine and are useful in the treatment of edema. Oral diuretics also have a blood-pressure-lowering ("antihypertensive") effect and are useful in the treatment of high blood pressure ("hypertension").

21. In 1968, total United States sales of oral diuretics to drug stores were approximately \$96.7 million. Geigy accounted for about 7.7% of total sales with 1968 sales of about \$7.5 million. CIBA accounted for about 5.8% with 1968 sales of about \$5.6 million. The seven largest sellers of oral diuretics account for over 80% of oral diuretic sales, and defendants CIBA and Geigy are among them.

22. When oral diuretics are given in conjunction with one or more antihypertensive drugs in treating hypertension, there is often a substantial increase in therapeutic effect. A commonly employed drug regimen for treatment of hypertension is a diuretic combined with reserpine, the generic name for an antihypertensive and calming agent. Reserpine is a crystalline alkaloid extracted from roots of plants of the Rauwolfia species. Diuretics are also marketed in combination with Rauwolfia serpentina and with products related to reserpine, such as syrosingopine, the generic name for an antihypertensive agent. These combinations are hereinafter referred to as "Rauwolfia-diuretics."

23. In 1968, sales of Rauwolfia-diuretics to drug stores and hospitals were approximately \$64.6 million. CIBA accounted for over 20% of the total with 1968 sales of approximately \$14.1. Geigy accounted for about 6.5% of the total with 1968 sales of approximately \$4 million. CIBA was the second largest seller of Rauwolfia-diuretics, and the top four companies accounted for over 75% of total sales. Geigy was the sixth largest seller, and the top eight companies accounted for about 97% of total sales.

24. CIBA manufactures pharmaceuticals at a plant at Summit, New Jersey. Geigy manufactures pharmaceuticals at plants at Cranston, Rhode Island and Suffern, New York.

25. A substantial portion of the sales of the products referred to in paragraphs 20 through 23 are made to buyers located in states other than that in which such products were manufactured.

#### Herbicides

26. Both CIBA and Geigy sell herbicides which are materials used to destroy plant life.

27. Geigy has sold herbicides since the 1940s. Engaged in the testing, manufacturing and selling of such products, Geigy has experimental farms in six states and manufacturing facilities in McIntosh, Alabama and in St. Gabriel, Louisiana.

28. Total United States sales of herbicides by manufacturers in 1968 were about \$505 million. In 1968, Geigy had sales of about \$135 million of herbicide products, accounting for about 25% of total United States herbicide sales.

29. CIBA entered the herbicides business in the United States in 1962. By 1968, CIBA had achieved sales of \$6.2 million of herbicide products. CIBA has an experimental farm and testing laboratory in Florida. It obtains the active chemical ingredients for its products from a domestic supplier and from its parent. These ingredients are formulated by third parties in the United States.

30. Substantial quantities of these products are sold and shipped in interstate trade and commerce by CIBA and Geigy from the states where manufactured to customers located in other states of the United States.

#### IV. OFFENSE CHARGED

31. At least since April 1969, CIBA Limited and J.R. Geigy, S.A., have been negotiating to merge their worldwide operations. The principles of an agreement to merge have been reached, although the formal agreement has not yet been executed.

32. If an agreement to merge CIBA Limited and J.R. Geigy, S.A., is carried out, then, in violation of Section 7 of the Clayton Act, a corporation shall acquire the whole or part of the stock or assets of either CIBA or Geigy, or both, and the effect of such acquisition may be substantially to lessen competition throughout the country in the above described trade and commerce in the following ways, among others:

(a). Actual competition between CIBA and Geigy may be eliminated in the manufacture and sale of detergent OBAs, textile OBAs, oral diuretics, Rauwolfia-diuretics and herbicides; and

(b). Actual competition between CIBA and Geigy may be eliminated in the sale of dyestuffs.

V. PRAYER

WHEREFORE, Plaintiff prays:

1. That the acquisition of the whole or any part of the stock or assets of either CIBA or Geigy, or both, described in paragraph 32 of this Complaint be adjudged and decreed a violation of Section 7 of the Clayton Act.

2. That defendants, their subsidiaries, officers, directors, agents, employees and all others acting on their behalf be enjoined from causing the whole or any part of the stock or assets of CIBA and Geigy to be acquired, either directly or indirectly, by the same person or organization.

3. That, pending the adjudication of the merits of this Complaint, a preliminary injunction issue against the defendants, their subsidiaries, officers, directors, agents, employees and all others acting on their behalf, containing the prohibitions prayed for in paragraph 2 above and, in addition, enjoining them from:

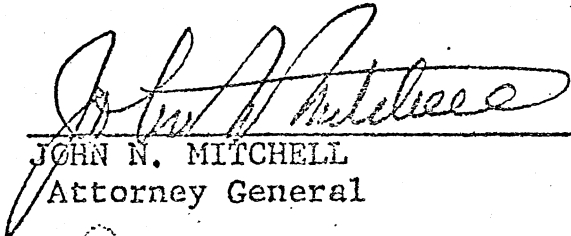
(a). Taking any action to change, directly or indirectly, the operation of the business of either CIBA or Geigy, or both, or the personnel connected with such operations, and

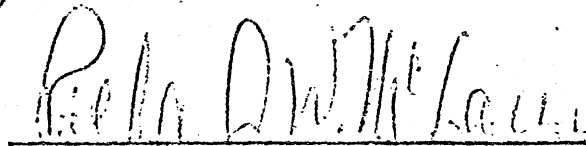
(b). Shifting sales, personnel, or equipment or any assets whatsoever of either CIBA or Geigy from one of said companies to the other or from either or both of said companies to any other entity.



4. That plaintiff have such other and further relief as the nature of the case may require and the Court may deem just and proper.

5. That plaintiff recover the cost of this action.

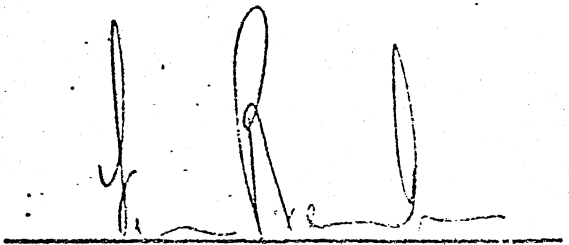
  
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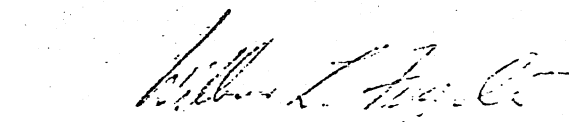
  
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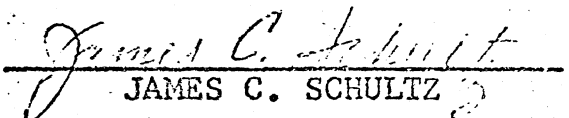
  
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Dated: July , 1970