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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,)
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 Plaintiff,)
)
 v.)
)
 UNITED SCIENTIFIC CO., INC.,)
)
 Defendant.)

Civil No. C-73-0299 ACW
Filed: November 9, 1973
Entered: December 11, 1973

FINAL JUDGMENT

Plaintiff, UNITED STATES OF AMERICA, having filed its complaint herein on February 26, 1973; defendant, UNITED SCIENTIFIC CO., INC., having appeared by its counsel; and plaintiff and defendant, by their respective attorneys, each having consented to the entry of this Final Judgment, without trial or adjudication of any issue of fact or law herein, and without this Final Judgment constituting evidence or an admission by any party consenting hereto with respect to any such issue,

NOW, THEREFORE, before any testimony or evidence has been taken herein, and without trial or adjudication of any issue of fact or law herein, and upon the consent of the parties hereto,

DRH

1 It is hereby ORDERED, ADJUDGED and DECREED as
2 follows:

3 I

4 The Court has jurisdiction of the subject matter hereof
5 and the parties hereto. The complaint states a claim upon
6 which relief may be granted against defendant under Section
7 1 of the Act of Congress of July 2, 1890 (as amended),
8 commonly known as the Sherman Act (15 U.S.C. §1).

9 II

10 As used in this Final Judgment:

- 11 (a) "Person" shall mean any individual, partnership,
12 firm, corporation or other business or legal entity;
13 (b) "United" shall mean the defendant United Scientific
14 Co., Inc.;
- 15 (c) "Dealer" shall mean a person engaged in the purchase
16 of microscopes from United for resale; and
17 (d) "Microscopes" shall mean microscopes and microscope
18 parts and accessories, including lenses.

19 III

20 The provisions of this Final Judgment applicable to
21 United shall also apply to each of its officers, directors,
22 agents, employees, subsidiaries, successors and assigns, and
23 all persons in active concert or participation with any of
24 them who shall have received actual notice of this Final
25 Judgment by personal service or otherwise. The provisions of
26 this Final Judgment shall apply to sales of defendant's
27 microscopes in the United States.

28 IV

29 United is enjoined and restrained from entering into,
30 adhering to, maintaining, enforcing, or claiming, directly or
31 indirectly, any rights under any contract, agreement, combina-
32 tion, understanding, plan or program with any dealer to:

1 (A) Fix, establish, maintain or adhere to prices or
2 discounts at which microscopes are bid, sold, offered for
3 sale, or advertised by any such dealer; and

4 (B) Limit or restrict the sales territories within
5 which, or the persons to whom dealers may bid, sell, offer
6 for sale or advertise microscopes.

7 V

8 United is enjoined and restrained from:

9 (A) Suggesting, urging, compelling or requiring any
10 dealer to establish, maintain, adopt, advertise or adhere to
11 any fixed, suggested or specified price, discount, markup
12 or margin of profit in the sale of microscopes;

13 (B) Encouraging the report of, or taking action in
14 response to any complaint by dealers regarding bidding or
15 selling at discounted prices in connection with the sale
16 of United microscopes by any other dealer;

17 (C) Suggesting, urging, compelling or requiring any
18 dealer to establish, maintain, adopt, adhere to or enforce
19 adherence to any limit on the classes of customers to whom,
20 or the territory in which, such dealer may bid, sell, offer
21 to sell or advertise microscopes;

22 (D) Suggesting, urging, compelling or requiring any
23 dealer to modify or withdraw its bid to any educational
24 institution or other public agency because of the price or
25 discount at which said dealer bid microscopes;

26 (E) Terminating or threatening to terminate the dealer
27 sales agreement of any dealer because of the prices at which,
28 the persons or classes of persons to whom, or the markets or
29 territories in which such dealer has bid, sold or offered
30 to sell United microscopes; and

31 (F) Discontinuing, curtailing or limiting the sale of
32 microscopes to, or otherwise penalizing any dealer because

1 of the prices at which, the persons or classes of persons
2 to whom, or the markets or territories in which such dealer
3 has bid, sold or offered to sell United microscopes.

4 VI

5 (A) Nothing in this Final Judgment shall prohibit United
6 from unilaterally suggesting retail prices, markups or
7 margin of profit to dealers for the sale of microscopes;
8 provided, however, that the page (or the first page of a
9 multipage document) containing such a suggestion shall include
10 a statement that each dealer is free to sell at whatever
11 prices, markups or margins of profit he may choose.

12 (B) Nothing in this Final Judgment shall be deemed to
13 prohibit United from availing itself of rights it may have
14 under the Miller-Tydings Act and the McGuire Act.

15 VII

16 (A) United is ordered and directed, within ninety (90)
17 days after the date of entry of this Final Judgment, to
18 revise any portion of its contracts and agreements with
19 dealers which are inconsistent with any provision of this
20 Final Judgment.

21 (B) United is ordered and directed, within ninety (90)
22 days after entry of this Final Judgment, to notify each such
23 dealer in writing, in a form acceptable to plaintiff, that he
24 may sell United products at such prices as, and to whatever
25 customers and wherever he may please.

26 (C) United is ordered and directed, for a period of ten
27 (10) years after entry of this Final Judgment, to deliver to
28 each new dealer with whom United commences business relations
29 a notice in writing in the same form as that approved for use
30 pursuant to subsection VII(B) above within thirty (30) days
31 after commencing such business relations.

32 (D) United is ordered and directed, within ninety (90)

1 days after the entry of this Final Judgment, to serve a copy
2 of this Final Judgment upon each of United's officers,
3 directors and each of its employees or representatives who
4 has responsibility for the sale of United products, and to
5 advise each such person that violation by him of this Final
6 Judgment could result in a conviction for contempt of court
7 and could subject him to imprisonment and/or fine.

8 (E) United is ordered and directed, for a period of ten
9 (10) years after entry of this Final Judgment, to serve a
10 copy of this Final Judgment upon each successor to those
11 officers, directors and supervisory employees of United
12 described in subsection (D) of this section VII, within
13 thirty (30) days after each successor is employed by or
14 becomes associated with United.

15 (F) United is ordered and directed, within one hundred
16 and twenty (120) days after the entry of this Final Judgment
17 to serve upon plaintiff affidavits concerning the fact and
18 manner of compliance with subsections (B) and (D) of this
19 section VII.

20 VIII

21 For a period of ten (10) years from the date of the
22 entry of this Final Judgment, United is ordered to file with
23 the plaintiff, on each anniversary date of such entry, a
24 report setting forth the steps which United has taken during
25 the prior year to advise United's appropriate officers,
26 directors and employees of their obligation under this Final
27 Judgment. Such report shall further contain the name and
28 address of any dealer whose dealership was terminated by
29 United and state the reasons for such termination.

30 IX

31 (A) For the purpose of determining or securing
32 compliance with this Final Judgment, and for no other purpose,

1 and subject to any legally recognized privilege, duly
2 authorized representatives of the Department of Justice
3 shall, upon the written request of the Attorney General, or
4 the Assistant Attorney General in charge of the Antitrust
5 Division, upon reasonable notice to the defendant made to
6 its principal office, be permitted:

7 (1) Access, during the office hours
8 of the defendant, and in the presence
9 of counsel if the defendant chooses,
10 to all books, ledgers, accounts,
11 correspondence, memoranda, and other
12 records and documents in the possession
13 or under the control of the defendant
14 relating to any of the matters contained
15 in this Final Judgment; and

16 (2) Subject to the reasonable convenience
17 of the defendant and without restraint
18 or interference from it, to interview
19 the officers and employees of the
20 defendant, who may have counsel present,
21 regarding any such matters;

22 (B) Upon the written request of the Attorney General
23 or the Assistant Attorney General in charge of the Antitrust
24 Division, made to its principal offices, the defendant
25 shall submit such reports in writing, to the Department of
26 Justice with respect to any of the matters contained in
27 this Final Judgment as from time to time may be requested;

28 (C) No information obtained by the means provided in
29 this Section IX shall be divulged by any representative of
30 the Department of Justice to any person other than a duly
31 authorized representative of the Executive Branch of the
32 plaintiff except in the course of legal proceedings to

1 which the United States is a party for the purpose of
2 securing compliance with this Final Judgment or as
3 otherwise required by law.

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6 Jurisdiction is retained for the purpose of enabling
7 either of the parties to this Final Judgment to apply to
8 this Court at any time for such further orders and directions
9 as may be necessary or appropriate for the construction or
10 carrying out of this Final Judgment, for the modification
11 of any of the provisions thereof, for the enforcement of
12 compliance therewith, and for the punishment of violations
13 thereof.
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16 Dated: December 11, 1973
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22 /s/ ALBERT C. WOLLENBERG
23 United States District Judge
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