

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 v.)
)
 CALMAR INCORPORATED and)
 REALEX CORPORATION,)
)
 Defendants.)

CIVIL ACTION
NO. 84-5271 (DRD)

FILED: JUNE 19, 1985
ENTERED: SEPT. 16, 1985

FINAL JUDGMENT

Plaintiff, United States of America, having filed its Complaint herein on December 20, 1984, and plaintiff's Motion for Preliminary Injunction having come on to be heard on January 21, 1985 before this Court, and the Court having considered papers in support of said motion and in opposition thereto, and having considered the evidence presented during the course of an evidentiary hearing on January 21-25, 1985, and the Court having made and filed its findings of fact and conclusions of law on January 30, 1985, and having denied plaintiff's Motion for Preliminary Injunction in an Opinion dated January 30, 1985, and the parties hereto, by their attorneys, having consented to the entry of this Final Judgment without further proceedings and without this Final Judgment constituting any evidence against or an admission by any party with respect to any issue;

NOW, THEREFORE, upon consent of the parties hereto, it is hereby,

ORDERED, ADJUDGED AND DECREED as follows:

I.

This Court has jurisdiction of the subject matter of this action and of each of the parties consenting hereto. The Complaint states a claim upon which relief may be granted against defendants under Section 7 of the Clayton Act (15 U.S.C. § 18).

II.

As used in this Final Judgment:

A. "Calmar" means Calmar Incorporated, a Delaware corporation with its principal offices in Watchung, New Jersey.

B. "Realex" means Realex Corporation, a former Missouri corporation with its principal offices in Kansas City, Missouri, which has been acquired by Calmar.

C. "Regular Sprayer" means a plastic mechanical pump device which sits on the top of a container, that when operated (by vertically depressing the head of the pump mechanism) dispenses from the container greater than one-half cubic centimeter of liquid in the form of a spray.

D. "Regular Dispenser" means a plastic mechanical pump device which sits on the top of a container, that when operated (by vertically depressing the head of the pump mechanism)

dispenses from the container up to three cubic centimeters of liquid in the form of a stream.

E. "Person" means any individual, partnership, firm, corporation, association or other business or legal entity.

The definitions in this section expressly exclude from their meaning high viscosity mechanical pump devices used for dispensing toothpaste.

III.

This Final Judgment applies to Calmar, and to its officers, directors, managers, agents, employees, subsidiaries, successors and assigns, and to all other persons acting in concert or participation with such defendant who shall have received actual notice of this Final Judgment by personal service or otherwise.

IV.

A. Calmar shall require, as a condition of the sale or other disposition of all, or substantially all, of its assets, that the acquiring party agree to be bound by the provisions of this Final Judgment and that such agreement be filed with plaintiff and the Court.

B. Calmar shall provide written notice to the plaintiff no later than thirty days subsequent to the effective date of any action whereby Calmar (1) changes its name, (2) liquidates

or otherwise ceases operations, (3) declares bankruptcy, or (4) is acquired by, or becomes a subsidiary of, another firm.

V.

A. Calmar is hereby enjoined and restrained (1) for a period of eight years from the entry of this Final Judgment from purchasing, consolidating with, merging with, or acquiring control of, by acquisition of its securities or its assets, any person who has been engaged in the manufacture of regular sprayers or regular dispensers for sale within the United States within one year preceding the date of the proposed transaction, without the prior written consent of the Department of Justice or of the Court, and (11) for an additional period of two years from purchasing, consolidating with, merging with, or acquiring control of, by acquisition of its securities or its assets, any person who has been engaged in the manufacture of regular sprayers or regular dispensers for sale within the United States within one year preceding the date of the proposed transaction, unless Calmar shall first give sixty (60) days advance written notice of any such proposed transaction to the Department of Justice.

B. Calmar is hereby enjoined and restrained for a period of five years from the entry of this Final Judgment from refusing to license any of the patents issued to or applied for by Realex listed in Appendix A to this Final Judgment on a non-exclusive basis and upon reasonable and non-discriminatory terms and conditions.

VI.

For the purpose of determining or securing compliance with this Final Judgment, and subject to any legally recognized privilege, from time to time:

A. Duly authorized representatives of the Department of Justice shall, upon written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to Calmar made to its principal office, be permitted:

(1) access during office hours of Calmar to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of Calmar, which may have counsel present, relating to any matters contained in this Final Judgment; and

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

B. Upon the written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division made to Calmar's principal office, Calmar shall submit such written reports, under oath if requested, with respect to any of the matters contained in this Final Judgment as may be requested.

C. No information or documents obtained by the means provided in this Section VI 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, or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If at the time information or documents are furnished by Calmar to plaintiff, Calmar represents and identifies in writing the material in any such information or documents for which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and Calmar marks each pertinent page of such material, "subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure," then plaintiff shall give ten days notice to Calmar prior to divulging such material in any legal proceeding (other than a grand jury proceeding) to which Calmar is not a party.

VII.

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 or directions as may be necessary or appropriate for the construction or carrying out of this Final Judgment, for the amendment or modification of any of its provisions, for the enforcement of compliance with it, or for the punishment of violations of it.

VIII.

This Final Judgment shall be in effect for a period of ten years following its date of entry.

IX.

Entry of this Final Judgment is in the public interest.

Dated:

/s/ Judge Debevoise
United States District Judge