

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. Farbenfabriken Bayer A. G. and Chemagro Corp., U.S. District Court, D. District of Columbia, 1969 Trade Cases ¶72,918, (Oct. 24, 1969)

[Click to open document in a browser](#)

United States v. Farbenfabriken Bayer A. G. and Chemagro Corp.

1969 Trade Cases ¶72,918. U.S. District Court, D. District of Columbia. Civil No. 586-68. Entered October 24, 1969. Case No. 1993 in the Antitrust Division of the Department of Justice.

Sherman Act

Patent Licensing—Subsidiary's Restrictive Patent Practices—Resale—Consent Decree.—An exclusive manufacturing subsidiary of a German patentee was barred by a consent decree from entering into any contract, agreement or understanding with purchasers of a patented insecticide that prohibits resale to any person in any area of the country, to any consumer, in any formulation or concentration, or for use outside the United States. The decree prohibits requiring purchasers to resell under specific trademarks. It bars the parent company from requiring its subsidiary to enter any such agreements.

For the plaintiff: Richard W. McLaren, Asst. Atty. Gen., Baddia J. Rashid, Charles L. Whittinghill, John L. Wilson, James H. Wallace, Jr., Bruce B. Wilson, William B. Bohling, and Leslie H. Jeffress, Attys., Dept. of Justice.

For the defendants: Allen F. Maulsby, of Cravath, Swaine & Moore, and Arnold M. Lerman, of Wilmer, Cutler & Pickering.

Final Judgment

MCGUIRE, D. J.: Plaintiff, United States of America, having filed its complaint herein on March 7, 1968, and defendant Farbenfabriken Bayer AG having been served pursuant to 35 U. S. C. Section 293 and Chemagro Corporation having thereafter been served pursuant to 15 U. S. C. Section 5, and each of the defendants, having consented to the personal jurisdiction of the Court for purposes of this action only, and having filed an answer denying the substantive allegations of such complaint, and plaintiff and defendants, by their respective attorneys, 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 any evidence or any admission by any party hereto with respect to any such issue, and the Court having considered the matter and being duly advised,

Now, Therefore, before the taking of any testimony and without trial or adjudication of any issue of fact or law and upon the consent of the parties hereto, it is hereby

Ordered, Adjudged and Decreed as follows:

I.

[Jurisdiction]

This Court has jurisdiction of the subject matter of this action and of the parties consenting hereto. The complaint states a claim for relief against defendants under Section 1 of the Act of Congress of July 2, 1890, as amended, entitled "An Act to protect trade and commerce against unlawful restraint and monopolies," commonly known as the Sherman Act.

II.

[Definitions]

As used in this Final Judgment:

(A) The term "Chemagro" means Chemagro Corporation.

(B) The term “Bayer” means Farben fabriken Bayer AG, a corporation organized and existing under the laws of the Federal Republic of Germany.

(C) The term “Chemagro product” means any chemical substance which, during the period this Final Judgment is in effect, is sold by Chemagro for ultimate use in protecting or benefitting plant life.

III.

[Applicability]

The provisions of this Final Judgment applicable to any defendant shall also apply to each of its successors, assigns, directors, officers, agents and employees, and to all persons in active concert or participation with such defendant who receive actual notice of the Final Judgment by personal service or otherwise.

IV.

[Resale Restrictions]

Chemagro is enjoined and restrained:

(A) From selling any Chemagro product in the United States pursuant to any contract, agreement or understanding with the purchaser which prohibits the purchaser from reselling such product (i) to any person, or (ii) in any area in the United States, or (iii) for any consumer end use, or (iv) in any formulation or concentration, or (v) for use outside of the United States, provided that nothing in this Final Judgment shall constitute or require a grant of any right in a foreign jurisdiction or prohibit enforcement or implementation of any foreign right.

(B) From refusing to sell any Chemagro product in the United States to a purchaser because of the purchaser's refusal to enter into a contract, agreement or understanding prohibited by Section IV(A).

(C) From placing upon packages, or requiring any purchaser to place upon packages, of any Chemagro product a statement which purports to create with any purchaser of such package in the United States a contract, agreement, or understanding prohibited by Section IV(A).

(D) From selling any Chemagro product in the United States pursuant to a contract, agreement or understanding with the purchaser which requires the purchaser, with respect to any product packaged or repackaged by such purchaser, to use a trade mark specified by Chemagro.

(E) Nothing contained in this Final Judgment shall prohibit Chemagro:

(1) From placing names or marks upon any Chemagro product or its package, from licensing names or marks to any person desiring the license, and, in cases where its name or marks are used, from exercising such rights as it may have under the law relating thereto;

(2) From refusing to sell Chemagro products to a purchaser who handles or markets such products in a manner which endangers the health or safety of human beings or plant or animal life;

(3) From complying with any requirements imposed by any governmental agency with respect to any Chemagro product.

V.

[Parent Firm]

Bayer is enjoined and restrained from causing Chemagro to engage in conduct in violation of Section IV.

VI.

[Notification]

Chemagro is ordered and directed, within sixty days after the date of entry of this Final Judgment, to mail a copy of this Judgment to each current customer of any Chemagro product.

VII.

[*Inspection and Compliance*]

For the purpose of securing compliance with this Final Judgment and for no other purpose, and subject to any legally recognized privilege:

(A) A duly authorized representative of the Department of Justice shall, upon writ ten request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to either defendant, made to its principal office, be permitted (1) access in the United States during reasonable office hours to all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of such defendant relating to any of the subject matter contained in this Final Judgment and (2) subject to the reasonable convenience of such defendant, and without restraint or interference from it, to interview in the United States officers or employees of such defendant, who may have counsel present, regarding any such matters, provided that no defendant shall be obligated to bring to the United States any records or documents or to bring to the United States for the purpose of interview any officer or employee except on order of this court specifically so providing.

(B) Upon written request of the Attorney General, or the Assistant Attorney General in charge of the Antitrust Division, defendants shall submit such reports in writing with respect to the matters contained in this Final Judgment as may from time to time be necessary to the enforcement of this Final Judgment.

No information obtained by the means provided in this Section VII shall be divulged by any representative of the Department of Justice, except in the course of legal proceedings to which the United States of America is a party for the purpose of securing compliance with this Final Judgment or as otherwise required by law.

VIII.

[*Jurisdiction Retained*]

Jurisdiction is retained 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 construction, carrying out, modification, termination or enforcement of or compliance with the provisions of this Final Judgment and for the punishment of violations hereof.

IX.

[*Termination*]

This Final Judgment shall terminate ten (10) years after the date of its entry and shall thereafter have no force or effect.