

UNITED STATES DISTRICT COURT FOR  
THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA, .	)	
	)	
Plaintiff,	)	Civil Action No. 79-2579
	)	
v.	)	Filed: July 29, 1981
	)	
UNDER SEA INDUSTRIES,	)	Entered: October 30, 1981
INCORPORATED,	)	
	)	
Defendant.	)	

FINAL JUDGMENT

Plaintiff, the United States of America, having filed its Complaint herein on September 27, 1979, and defendant, Under Sea Industries, Incorporated, having answered the Complaint and denied the allegations thereof, and both parties 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 against or an admission by any party with respect to any such issue;

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

ORDERED, ADJUDGED, AND DECREED, as follows:

I.

This Court has jurisdiction over the subject matter of this action and of the parties hereto. The Complaint states a claim upon which relief may be granted against the defendant under Section 1 of the Sherman Act (15 U.S.C. § 1).

## II.

As used in this Final Judgment:

(A) "Defendant" means defendant Under Sea Industries, Incorporated.

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

(C) "Scuba diving equipment" means products used to facilitate surface and underwater aquatic sport diving, including, but not limited to, self-contained underwater breathing apparatus, underwater gauges, flotation and buoyancy control vests, underwater lights, wetsuits, facemasks, snorkels, fins, and other similar or allied equipment.

(D) "Scubapro equipment" means scuba diving equipment manufactured, assembled or sold by the defendant under any trade name owned or used by defendant.

(E) "Dealer" means any person who purchases and resells scuba diving equipment to consumers in the United States.

(F) "Scubapro dealer" means a dealer which has been selected and authorized by Under Sea Industries to resell and service Scubapro equipment.

## III.

This Final Judgment applies to the defendant and to each of its officers, directors, agents, employees, domestic subsidiaries, successors and assigns, and to all other persons in active concert or participation with any of them who shall have received actual notice of this Final Judgment by personal service or otherwise, provided, however, that nothing contained herein shall apply to any transaction solely between defendant and its officers, directors, employees, parents or domestic subsidiaries, or any of them when acting in such capacity.

#### IV.

Defendant is enjoined and restrained from:

(A) Entering into, adhering to, maintaining, or enforcing any contract, agreement, combination or mutual understanding with any dealer to fix, raise, maintain or stabilize the price, discount, markup or margin of profit at which Scubapro equipment is sold or offered for sale by such dealer or any other dealer.

(B) Terminating, penalizing or threatening to terminate or penalize any Scubapro dealer because of the prices, discounts, markups or margins of profit at which such dealer or any other dealer has sold, offered to sell or advertised Scubapro equipment.

#### V.

Except as provided in Section IV, nothing in this Final Judgment shall prohibit defendant from unilaterally suggesting resale prices for the sale of Scubapro equipment or explaining the basis for such suggestion on the condition that any such suggestion or explanation shall include a statement that the resale prices are suggested only and that each dealer is free to sell at whatever prices, discounts, markups or margins of profit such dealer may choose.

#### VI.

Except as provided in Section IV, nothing in this Final Judgment shall be deemed to limit defendant's rights to:

(A) Select Scubapro dealers or limit the number of such dealers; or

(B) Reduce or suspend shipments to or terminate any Scubapro dealer.

#### VII.

Defendant is ordered and directed to:

(A) Within sixty (60) days after entry of this Final Judgment, furnish a copy of same to each of its officers and

directors, and to each employee or agent who is engaged in, or has responsibility for, the sale or distribution of Scubapro equipment.

(B) Provide a copy of this Final Judgment to each of its future officers, directors, and employees in the positions described in Paragraph A above, within sixty (60) days after their employment.

(C) Provide a copy of this Final Judgment, together with a written notice thereof in a form acceptable to plaintiff, to all present Scubapro dealers within sixty (60) days of entry of this Final Judgment and, within the ensuing four years, provide a copy of these materials to each new Scubapro dealer.

(D) Maintain files containing the names and addresses of Scubapro dealers to whom defendant has terminated shipments of Scubapro equipment and the reasons for such terminations.

(E) Initiate and maintain a program to ensure compliance with this Final Judgment which shall include at a minimum with respect to each of its officers and each employee or agent who is engaged in, or has responsibility for, the sale or distribution of Scubapro equipment:

(1) The annual distribution to them of this Final Judgment, and of a written directive concerning defendant's antitrust compliance program which shall include (a) a statement that noncompliance may result in appropriate disciplinary action by defendant, and (b) advice that supervising personnel or legal advisors are available at all reasonable times to confer about compliance questions or problems;

(2) The holding of one or more meetings with them to review the terms of this Final Judgment and the obligations it imposes, with such meetings to be arranged and conducted so that each of them attends at least one such meeting within approximately each twelve month period; and

(3) The imposition of a requirement that a responsible officer of the defendant sign and retain during the term of this Final Judgment an acknowledgment that the requirements of subparagraphs VII(E) (1) and (2) have been fulfilled, which acknowledgment shall include a list of the names of all individuals who have received the written directive and have attended the meetings described above.

(F) Within ninety (90) days after entry of this Final Judgment, and annually thereafter on the anniversary date of this Final Judgment, defendant shall serve upon the plaintiff an affidavit setting forth the fact and manner of compliance with Section VII of this judgment.

#### VIII.

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 defendant made to its principal office, be permitted:

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

(2) Subject to the reasonable convenience of the defendant and without restraint or interference from it, to interview officers, employees and agents of defendant, 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 defendant's principal office, the defendant 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.

No information or documents obtained by the means provided in this Section VIII 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.

(C) If at the time information or documents are furnished by defendant to plaintiff, the defendant represents and identifies in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and defendant 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 10 days notice shall be given by plaintiff to the defendant prior to divulging such material in any legal proceeding (other than a grand jury proceeding) to which defendant is not a party.

#### IX.

The defendant shall require, as a condition of the sale or other disposition of all, or substantially all, of the assets used by it in the manufacture and sale of scuba diving equipment, that the acquiring party agree to be bound by the provisions of this Final Judgment. The acquiring party shall file with the Court, and serve upon the plaintiff, its consent to be bound by this Final Judgment.

X.

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 modification of any of the provisions hereof, for the enforcement of compliance herewith, and for the punishment of any violation hereof.

XI.

This Final Judgment will expire on the tenth anniversary of its date of entry or, with respect to any particular provision, on any earlier date specified.

XII.

Entry of this Final Judgment is in the public interest.

Dated: October 30, 1981

/s/ Judge Prate  
UNITED STATES DISTRICT JUDGE