

IN THE MATTER OF
STANDARD OIL COMPANY (INDIANA) ET AL.
CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION
OF SECTION 7 OF THE CLAYTON ACT

Docket C-1371. Complaint, July 10, 1968—Decision, July 10, 1968

Consent order requiring a major oil company and its wholly owned subsidiary to license their polypropylene patent rights for a period of ten years to all financially responsible applicants and furnish such licensees with certain technical information.

COMPLAINT

The Federal Trade Commission, having reason to believe that the above-named respondents have violated the provisions of Section 7 of the Clayton Act (15 U.S.C. § 18), issues this complaint, stating its charges as follows:

I. Definitions

1. For the purposes of this complaint, the following definition is applicable:

“Polypropylene”—normally solid, predominantly crystalline polymers and copolymers (including block copolymers) of propylene, which may contain minor amounts up to ten percent (10%) by weight of other monomeric materials added to the polymerization or copolymerization reaction which do not change the essential nature of the Polypropylene.

II. The Respondents

A. Standard Oil Company (Indiana)

2. Respondent Standard Oil Company (Indiana), hereinafter referred to as “Standard,” is a corporation organized and existing under the laws of the State of Indiana, with its principal

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office and principal place of business located at 910 South Michigan Avenue, Chicago, Illinois, 60680.

3. Standard, in 1966, was the 15th largest industrial corporation in the United States in terms of sales and the 12th largest in terms of assets. Total revenue from all of Standard's operations during 1966 was \$3,351,014,000, while its total assets amounted to \$3,848,934,000.

4. Standard, together with its consolidated subsidiaries, is a fully integrated oil company which distributes petroleum products throughout the United States. Its operations include the exploration for and production of crude oil and natural gas; the refining, transporting and marketing of petroleum; and the manufacture and marketing of petrochemical products.

5. Standard is one of the four companies currently involved in Interference No. 89,634, a proceeding before the Board of Patent Interferences, to determine entitlement to a United States patent on polypropylene as a composition of matter.

6. At all times relevant herein, Standard has sold and shipped products in interstate commerce throughout the United States and engaged in "commerce" within the meaning of the Clayton Act.

B. Amoco Chemicals Corporation

7. Respondent Amoco Chemicals Corporation, hereinafter referred to as "Amoco," is a corporation organized and existing under the laws of the State of Delaware, with its principal office and principal place of business located at 130 East Randolph Drive, Chicago, Illinois, 60601.

8. Amoco was formed by Standard in 1957 as its chemical subsidiary. It is a wholly owned, totally integrated subsidiary with marketing, research, manufacturing and staff functions. Its business includes particularly, but is not limited to, the conversion of petroleum-based raw materials to petrochemicals and related products. In 1966, Amoco's sales amounted to \$111.9 million and were projected to reach approximately \$185 million in 1967.

9. At all times relevant herein, Amoco has sold and shipped products in interstate commerce throughout the United States and engaged in "commerce" within the meaning of the Clayton Act.

III. The Acquired Company

Avisun Corporation

10. Avisun Corporation, hereinafter referred to as "Avisun," is a corporation organized and existing under the laws of the

State of Delaware, with its principal office and principal place of business located at 21 South Twelfth Street, Philadelphia, Pennsylvania, 19107.

11. Avisun, originally formed in 1959 as a joint venture between Sun Oil Company, hereinafter referred to as "Sun," and American Viscose Corporation, became a wholly owned subsidiary of Sun on December 31, 1966. It has been one of the principal domestic producers of polypropylene and polypropylene film. Through its 50% owned subsidiary, Patchogue-Plymouth Company, Avisun has also been a major producer of polypropylene carpet backing.

12. Avisun ranks either first or second among all domestic producers of polypropylene. Plant expansions have increased Avisun's annual productive capacity from 100 million pounds in 1966 to a projected 190 million pounds in 1968, when total domestic capacity is estimated to be 950 million pounds. In 1966, Avisun produced almost 90 million pounds of polypropylene, accounting for approximately 16.2% of total domestic production during that year. As of December 31, 1966, Avisun and Patchogue had combined assets of almost \$61.5 million and sales of over \$32 million.

13. Avisun was the second company to produce polypropylene commercially in the United States. It has maintained a strong research and development program which has enabled it to develop the first true polypropylene copolymers; to introduce modified-filled resins; to be the first to produce cast polypropylene film; and to pioneer the development of polypropylene woven fabrics.

14. Avisun has developed one of the best processes for producing polypropylene now available. It has consistently followed a policy of openly licensing its process and technical information. Furthermore, it has entered into at least one arrangement whereby it sells polypropylene, at a discount, to a nonproducing company, which in turn resells the polypropylene on the merchant market. Such arrangements enable nonproducing companies to develop marketing skills prior to committing themselves to building their own production facilities.

15. At all times relevant herein, Avisun has sold and shipped products in interstate commerce throughout the United States and engaged in "commerce" within the meaning of the Clayton Act.

IV. The Nature Of Trade And Commerce

Polypropylene

16. Polypropylene was commercially introduced into the United States in 1957. It is the newest of the group of large volume thermoplastics which includes polystyrene, polyethylene and polyvinyl chloride.

17. Domestic production of polypropylene in significant commercial quantities did not begin until 1960. Since then, its rate of growth has exceeded that of all other large volume plastics. Production increased from 35 million pounds in 1960 to 544 million pounds in 1966, was estimated to have been in excess of 620 million pounds in 1967, and is projected to reach 950 million pounds in 1968.

18. Nine companies produced polypropylene during 1967. However, one of the producers, which had an annual productive capacity of 30 million pounds, announced its intention to discontinue polypropylene production by the end of 1967. In 1965, the four largest producers accounted for over 70% of total domestic production of polypropylene.

19. Capital investment represents a substantial barrier to entry into the production of polypropylene. An investment of from \$20 to \$30 million would be required to construct and bring on stream a plant of minimum efficient size.

20. Technological requirements present another substantial barrier to entry into the production of polypropylene. Very few companies are able to develop independently the technical skills and know-how required to enter successfully the commercial production of polypropylene. Most prospective entrants find it necessary to purchase the requisite technology from existing producers.

21. At the present time, Standard and three other companies are involved in an interference proceeding to determine entitlement to a United States patent on polypropylene as a composition of matter. Barriers to entry into the production of polypropylene will be substantially heightened upon completion of this proceeding since no prospective producer will be able to manufacture polypropylene unless a license can be obtained under the composition of matter patent.

V. The Acquisition

22. On October 18, 1967, Standard and Sun announced that Amoco had agreed to purchase all the issued and outstanding stock of Avisun, including the latter's partnership interest in

Patchogue, from The Claymont Investment Company, hereinafter referred to as "Claymont." Claymont, a Delaware corporation, is a wholly owned subsidiary of Sun and was the lawful owner of record of all the outstanding shares of stock of Avisun. The announced purchase price was \$80 million. The acquisition was consummated on January 29, 1968.

VI. Violations

23. The effect of the acquisition of Avisun by Standard, through its wholly owned subsidiary Amoco, may be substantially to lessen competition or to tend to create a monopoly in the manufacture and sale of polypropylene in the United States in the following ways, among others:

(a) Actual and potential competition generally in the manufacture and sale of polypropylene may be substantially lessened;

(b) Substitution of Standard for Avisun as a participant in the polypropylene industry may result in a substantial heightening of barriers to entry into the manufacture and sale of polypropylene, thereby resulting in a substantial lessening of actual and potential competition; and

(c) Concentration in the manufacture and sale of polypropylene, which is already high, may be further increased.

24. The acquisition by respondents, as alleged above, constitutes a violation of Section 7 of the Clayton Act (15 U.S.C. § 18).

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondents named in the caption hereof, and the respondents having been furnished thereafter with a copy of a draft of complaint which the Bureau of Restraint of Trade proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondents with violation of Section 7 of the Clayton Act, as amended; and

The respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondents that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and

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having determined that it had reason to believe that the respondents have violated the said Act, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of thirty (30) days, now in further conformity with the procedure prescribed in § 2.34(b) of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent Standard Oil Company (Indiana) is a corporation organized, existing and doing business under and by virtue of the laws of the State of Indiana, with its office and principal place of business located at 910 South Michigan Avenue, Chicago, Illinois 60680.

Respondent Amoco Chemicals Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 130 East Randolph Drive, Chicago, Illinois 60601.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents.

ORDER

I

It is ordered, That:

(A) Respondents, for a period of ten (10) years from the effective date of this Order, shall grant to all financially responsible applicants making written request therefor: (1) a license to the United States patent rights and technical information relating to the production of polypropylene covered by the form of license agreement attached to this Order as License Agreement Form No. 1* on reasonable terms and conditions which are no less favorable to licensee than those contained in said form of license agreement; and (2) a license to the United States patent rights and technical information relating to the production of polypropylene film covered by the form of license agreement attached to this Order as License Agreement Form No. 2* on reasonable terms and conditions which are no less favorable to licensee than those contained in said form of license agreement; and

(B) Respondent Standard Oil Company (Indiana), should it obtain any United States patent or patents containing a claim or claims corresponding substantially to any count of Inter-

* License Agreement Form Nos. 1 and 2 omitted in printing.

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ference No. 89,634, which contains a claim to polypropylene as a composition of matter, shall grant to all financially responsible applicants making written application therefor a license under such patent or patents on reasonable terms and conditions which are no less favorable to licensee than those contained in the form of license agreement attached to this Order as License Agreement Form No. 3.**

II

It is further ordered, That:

(A) The taking of a license pursuant to Paragraph I of this Order shall not be construed as preventing any person from attacking, at any time, the validity or scope of any patent or patents covered by Paragraph I of this Order nor shall this Order be construed as imputing any validity or value to any of the patents or technical information covered by Paragraph I of this Order;

(B) Neither respondent shall dispose of any patent or patents, or right thereunder, so as to deprive either respondent of the power to grant licenses in accordance with Paragraph I of this Order without the prior approval of the Federal Trade Commission; and

(C) Neither respondent shall acquire, directly or indirectly, for a period of ten (10) years from the effective date of this Order, title to, or any interest in, or any license under any United States Letters Patent or any technical information directed to or primarily useful in connection with the production of polypropylene or polypropylene film, except from employees, agents or independent contractors who shall have developed such patents or technical information pursuant to a contract with or while employed by such respondent, without the prior approval of the Federal Trade Commission unless: (1) such respondent also obtains the right to issue licenses under such technical information or patents on terms and conditions no less favorable to licensee than those contained in the forms of license agreement attached to this Order as License Agreement Form No. 1 or License Agreement Form No. 2; or (2) such respondent shall have acquired a nonexclusive right or license under such technical information or patents and shall have made a *bona fide* effort (not including additional monetary consideration) to persuade the licensor to make available to any third person requesting the same a right or license equivalent to that required of such respondent by

** License Agreement Form No. 3 omitted in printing.

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Paragraph I(A) of this Order and on terms and conditions at least as favorable as those accorded to such respondents.

III

It is further ordered, That for a period of ten (10) years from the effective date of this Order respondents shall, upon written request from the first four licensees granted a license relating to the manufacture of polypropylene covered by License Agreement Form No. 1 referred to in Paragraph I(A) of this Order which shall not be engaged in the manufacture of polypropylene, but shall desire to purchase polypropylene for resale in the United States, supply such licensee with a quantity of polypropylene not to exceed ten million (10,000,000) pounds per year at a price and on terms and conditions which are reasonable and in no event less favorable to such licensee than those granted by either respondent to any other domestic purchaser for resale: *Provided,* That such licensee shall give respondents at least one (1) year's notice of its intention to purchase such polypropylene and shall enter into a contract for the purchase of not less than two million (2,000,000) pounds annually of such polypropylene and for a term of at least one (1) year's duration: *Provided further,* That the quantity of colored and filled polypropylene to be supplied pursuant to this paragraph shall not exceed twenty percent (20%) of the total polypropylene so supplied: *And provided further,* That respondents shall not be obligated to supply polypropylene under this paragraph to more than two (2) such licensees if, because of their own requirements and contractual commitments with other customers, respondents do not have available the quantity of polypropylene requested by such licensee.

IV

It is further ordered, That for a period of ten (10) years from the effective date of this Order, neither respondent shall acquire without the prior approval of the Federal Trade Commission, directly or indirectly, through subsidiaries, joint ventures or otherwise, the whole or any part of the stock, share capital or assets (other than products, machinery or equipment purchased in the ordinary course of business) of any domestic concern engaged in the production, processing, conversion or sale of polypropylene or of any polypropylene products, nor shall either respondent enter into any arrangement with such domestic concern, having the same economic effect as would result from any such acquisition, pursuant to which such respondent obtains

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the market share, in whole or in part, of such domestic concern: *Provided*, That this Paragraph shall not apply to any acquisition of a domestic concern which shall have total sales of polypropylene of less than five million (5,000,000) pounds or of products the polypropylene content of which shall not exceed five million (5,000,000) pounds in the year prior to acquisition: *And provided further*, That nothing in this Order shall prevent either respondent from acquiring the whole or any part of the stock, share capital or assets of Avisun Corporation or Patchogue-Plymouth Company.

V

It is further ordered, That:

(A) within sixty (60) days from the effective date of this Order and every six (6) months thereafter, each respondent shall report in writing to the Federal Trade Commission the steps it has taken to comply with Paragraphs I, II and III of this Order and any steps taken to inform possible interested parties; and

(B) within sixty (60) days from the effective date of this Order and annually thereafter, each respondent shall report in writing to the Federal Trade Commission the manner and form in which it intends to comply, is complying or has complied with Paragraph IV of this Order.

It is further ordered, That each respondent shall forthwith distribute a copy of this Order to each of their operating divisions and subsidiaries.
