

Consent order requiring a chemical producer of Pittsburgh, Pa., to void its resorcinol supply contracts containing requirements or exclusive dealing provisions; to cease entering into illegal requirements contracts, discriminating in price between its customers, and acquiring resorcinol firms without prior Commission approval; and requiring respondent to grant unrestricted production licenses under its resorcinal patents to producers.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act (38 Stat. 717, 15 U.S.C.A. Sec. 41, 52 Stat. 111), and by virtue of the authority vested in it by said Act, the Federal Trade Commission

having reason to believe that Koppers Company, Inc., a corporation, more particularly described and referred to hereinafter as respondent, has violated the provisions of Section 5 of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby names the previously mentioned corporation as respondent herein, and issues its complaint against the named party stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Koppers Company, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal office and place of business located at 436 Seventh Avenue, Pittsburgh, Pennsylvania.

PAR. 2. Respondent is a widely diversified corporation operating domestically and internationally. Domestically, respondent operates in the following fields and divisions: tar and chemicals, plastics, forest products, metal products, and, engineering and construction. The annual gross dollar volume of company-wide sales of respondent in 1965 was about \$371,000,000.

PAR. 3. Respondent, either directly or through its tar and chemicals division, is engaged in the production, sale and distribution of resorcinol. Respondent generally refers to resorcinol, its derivatives and by-products as penacol products.

Resorcinol, itself, is an organic chemical compound produced by the fusion of benzene, sulphuric acid and caustic soda. Resorcinol and resins and adhesives produced from resorcinol are important in the manufacture and production of rubber tires and belts, structural laminated timbers used externally, certain organic dyes and ultraviolet ray light absorbers, pharmaceuticals, and explosive compounds.

Respondent in its literature states that, "There are no known chemicals considered to be competitive to resorcinol per se." For the past fifteen years, respondent Koppers has enjoyed a monopoly in the production of resorcinol on a commercial scale in the United States. Respondent's production of resorcinol in 1965 amounted to about 15,000,000 pounds and gross sales of penacol products by respondent in 1965 were about \$10,362,641. In 1962, on gross sales of about \$9,391,000 of penacol products, respondent earned a net profit of about \$3,103,000.

PAR. 4. Respondent produces resorcinol at its plant located at Petrolia, Pennsylvania and distributes resorcinol and resorcinol products to customers located in states other than the State of Pennsylvania. There has been, and is now, a pattern and course of interstate commerce in resorcinol and resorcinol products by respondent within the intent and meaning of the Federal Trade Commission Act.

PAR. 5. Respondent, Koppers would now be in substantial competition in the commercial production sale and distribution of resorcinol in the United States with other commercial producers of resorcinol were it not for certain unfair methods of competition and certain unfair acts and practices of the respondent as hereinafter set forth.

PAR. 6. In the course and conduct of its business in commerce as above described, respondent has engaged and is now engaged in certain acts and practices with the intent and purpose of fostering, promoting and maintaining its monopolistic position as the sole domestic producer of resorcinol on a commercial scale. Among the acts and practices employed and now being employed by respondent in furtherance of its monopoly, but not limited thereto, have been the use of persuasion, intimidation, threats, coercion, price cuts, and long-term requirements contracts.

Examples of such acts and practices of respondent are the following:

(a) In March 1965, two of respondent's officials traveled to Birmingham, Alabama, for the purpose of conferring with and discouraging officials of United States Pipe and Foundry Company (hereinafter also referred to as U.S. Pipe) from proceeding with their plans to construct and operate a plant for the production of resorcinol on a commercial scale. In the course of the subsequent conference with officials of U.S. Pipe, respondent's officials, among other things:

(1) Expressed the hope that U.S. Pipe would not enter the resorcinol market.

(2) Portrayed a gloomy picture of U.S. Pipe's prospects in the resorcinol market.

(3) Threatened that drastic reductions in the price of resorcinol would result should U.S. Pipe decide to enter the market.

(4) Stated that respondent would be interested in a joint venture with U.S. Pipe to build a Udex benzene purification plant to channel U.S. Pipe's benzene into the commercial benzene market instead of converting it into resorcinol, provided U.S. Pipe abandoned its resorcinol plans.

(b) Shortly after the public announcement by United States Pipe and Foundry Company in April 1965, that it was constructing a plant for the production of resorcinol, respondent moved to foreclose U.S. Pipe from entering the market through the following:

(1) Respondent began to offer reductions in the price of technical grade resorcinol of up to 31 percent; from 65½ cents per pound to a minimum of 50 cents per pound. Such price reductions, however, were to be made only to certain large volume pur-

Complaint

79 F.T.C.

chasers who would enter into long-term requirements contracts with respondent. Under such contracts, these customers would be obliged to purchase 80 percent to 100 percent of their resorcinol requirements from respondent for periods of three to five years. Previous resorcinol contracts with respondent had rarely been for periods in excess of one year.

(2) In order to obtain rapid acceptance of these long-term requirements contracts, respondent made the price reduction of resorcinol under these contracts retroactively available to those who would agree to sign them by a certain date.

(3) Respondent continued to press its customers to enter into such long-term requirements contracts until it had succeeded in obtaining contract commitments covering 90 percent or more of the domestic, non-competitive market for resorcinol.

(4) Respondent at this time also obtained the agreement of its two resorcinol sales agents that they would not handle any competitive resorcinol for a period of three years.

PAR. 7. Among the effects of respondent's acts and practices as above alleged in attempting to discourage and/or foreclose the entry of actual or potential rival producers into the resorcinol market, but not limited thereto, has been the failure of United States Pipe and Foundry Company to establish itself in the commercial resorcinol market as an alternate producer and/or viable competitor.

Furthermore, the existence of respondent as the sole commercial producer of resorcinol in the United States would constitute a potential hazard to the health, safety and well-being of the American people. Manufacture of resorcinol is extremely dangerous due to the risk of explosion. If respondent's present production facilities were accidentally destroyed as were the facilities of the Hayden Chemical Company in 1951, the last known producers, and were the respondent to succeed in foreclosing the resorcinol market to U.S. Pipe, there would be no plant in the United States capable of producing resorcinol on a commercial scale.

PAR. 8. The acts and practices of respondent, Koppers Company, Inc., as herein alleged, have had and do have the effect of hindering, lessening, restricting, restraining and eliminating competition in the production, sale and distribution of resorcinol; have had and do have a dangerous tendency to unduly hinder competition or to create in respondent a monopoly; have constituted an attempt to monopolize and have foreclosed markets and access to markets to actual or potential competitors in the production, sales and distribution of resorcinol; are all to the prejudice of actual or potential competitors

of respondent and to the public; and constitute each and all unfair methods of competition and unfair acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

DECISION AND ORDER

The Commission, by order issued December 18, 1970, having remanded this proceeding to the hearing examiner for a trial *de novo*, and thereafter by order issued May 5, 1971, having withdrawn this matter from adjudication pursuant to Section 2.34(d) of its rules; and

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

The Commission having thereafter given careful consideration to the executed consent agreement and having determined that the relief provided by the order contained therein is adequate and appropriate in all respects to dispose of this matter, and having thereupon provisionally accepted the executed consent agreement and placed such agreement on the public record for a period of thirty (30) days, and having received and duly considered comments from interested members of the public, now in further conformity with the procedure prescribed in Section 2.34(b) of its rules, the Commission hereby makes the following jurisdictional findings and enters the following order:

1. Respondent Koppers Company, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal office and place of business located at 436 Seventh Avenue, Pittsburgh, Pennsylvania.
2. The Federal Trade Commission has jurisdiction of this proceeding and of the respondent and the proceeding is in the public interest.

ORDER

It is ordered. That respondent Koppers Company, Inc., a corporation, its officers, agents, representatives, employees, successors and assigns, directly or indirectly, through any corporate or other device, in or in connection with the manufacture, sale and distribution of resorcinol in commerce within the United States, shall:

Decision and Order

79 F.T.C.

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(1) Notify each customer who is a party to any contract or agreement with respondent for the supply or furnishing of resorcinol which requires the customer to obtain its total requirements or any stated percentage of its total requirements of resorcinol from respondent or which contains an exclusive dealing provision, or which, as of the effective date of this order, has a term remaining in excess of one year, that its contract is hereby cancelled, terminated, voided and rescinded pursuant to this order. Said notice shall be given within ninety (90) days of the effective date of this order by letter sent registered or certified mail to each such customer on respondent's stationery, signed by a duly authorized officer of respondent and in the form of Exhibit A, attached hereto.

(2) For a period of five (5) years from the effective date of this order, cease and desist from:

(a) Entering into any contract or agreement with any purchaser or prospective purchaser of resorcinol which requires such purchaser or prospective purchaser to purchase resorcinol from respondent for any period of time in excess of one (1) year;

(b) Entering into any contract or agreement with any purchaser or prospective purchaser of resorcinol which contains an automatic renewal or "evergreen" clause;

(c) Entering into any requirements contract or agreement with any purchaser or prospective purchaser of resorcinol which requires such purchaser or prospective purchaser to purchase its total requirements of resorcinol from respondent, or any stated percentage of its requirements from respondent, and for an additional five (5) years thereafter entering into any requirements contract or agreement with any purchaser or prospective purchaser which requires such purchaser or prospective purchaser to purchase more than fifty (50) percent of its requirements of resorcinol from respondent;

Provided, however, That respondent may enter into contracts with any purchasers or any prospective purchasers for the sale of resorcinol to be delivered within one (1) year, and respondent may grant assurances of availability of resorcinol to any such purchasers or prospective purchasers.

(3) For a period of ten (10) years from the effective date of this order, cease and desist from selling or making a contract or agreement for the sale of resorcinol to any purchaser or prospective purchaser on the condition, agreement or understanding that the purchaser or prospective purchaser shall not use or deal in or sell resorcinol manu-

factured, sold or distributed by a competitor or competitors of respondent.

(4) For a period of five (5) years from the effective date of this order, cease and desist from discriminating in price in contracts entered into hereafter directly or indirectly between those purchasers who buy resorcinol from respondent pursuant to term or quantity contracts and those competing purchasers who buy resorcinol from respondent on a spot purchase basis: *Provided, however*, That nothing herein contained shall prevent differentials which respondent can demonstrate make only due allowance for differences in the cost of manufacture, sale, or delivery resulting from differing methods or quantities in which such commodities are to such purchasers sold or delivered, and differentials which respondent can demonstrate were made in good faith to meet an equally low price of a competitor or competitors of respondent.

(5) For a period of ten (10) years from the effective date of this order, without prior approval of the Federal Trade Commission:

(a) Not make any acquisition of any corporation making resorcinol in the United States;

(b) Not make any acquisition of any domestic corporation purchasing resorcinol in the United States for use therein in excess of two and one-half (2½) percent of respondent's total annual sales of resorcinol;

(c) Not enter into any joint venture with any corporation for the making of resorcinol in the United States; and

(d) Not purchase directly any United States patent for the making of resorcinol.

(6) For a period of three (3) years from the effective date of this order:

(a) Grant to any domestic applicant approved by the Federal Trade Commission a non-exclusive, non-discriminatory license under any and all claims of United States Patents Nos. 2,736,754 and 3,462,497. Said licenses granted hereunder shall be for the full, unexpired term of said patents and shall contain no restrictions or limitations, except that such licenses may contain provisions in a form customary in such patent licenses, allowing respondent to collect reasonable royalties based on standards generally applicable to the chemical industry, providing for the inspection of books and records by independent auditors to determine the correctness of any royalty payment, and providing for the cancellation of the licenses at the option of respondent upon failure of the licensee to permit such inspection or to pay royalties due and payable. Said licenses shall pro-

vide that in the case of respondent granting or having granted more favorable terms to any other licensee, the licensee under said license shall be entitled to equal treatment: *Provided, however,* That respondent may require any licensee to pay upon acceptance of said license an amount not exceeding \$2,500 which shall be applied against future royalty payments;

(b) Furnish upon written application from any licensee under Paragraph 6(a) herein, at cost to respondent for providing such know-how information, the written technical know-how currently used by respondent as of the effective date of this order for the commercial manufacture of resorcinol, including, but not limited to blueprints, drawings, and specifications (other than confidential cost accounting data relating to respondent's own costs), and reasonable plant visits by any such licensed party, subject to an agreement with the party receiving such written technical know-how and plant visit information which includes a provision not to disclose it to others; and

(c) Not make any assignment or sale of its patents or know-how which would prevent it from fully complying with the provisions of this order.

For purposes of Paragraphs 6(a) and 6(b) herein, "any domestic applicant approved by the Federal Trade Commission" shall mean: (1) any company as of the effective date of this order not engaged in the commercial manufacture of resorcinol which, by written application to the Commission, has established its good faith intention and capability of entering into the production of resorcinol in the United States: *Provided, however,* That in no event shall the Commission approve more than five (5) such applicants to qualify under the provisions of this order; and (2) any company engaged in the commercial manufacture and sale of resorcinol in the United States as of the effective date of this order which, by written application made within three months of the approval by the Commission of the first domestic applicant under (1) immediately above, is able to demonstrate to the Commission that it has a genuine technological and competitive need for such patent licenses or written technical know-how, and which shall be eligible to receive from respondent, subject to the terms and conditions of Paragraphs 6(a) and (b) above, only those patent licenses or that written technical know-how, or both, that are made available by respondent to the first domestic applicant approved by the Commission under (1) immediately above.

For purposes of Paragraph 6(b) herein, "others" shall mean separate corporations, firms and individuals, including but not limited to affiliates and subsidiaries.

It is further ordered, That respondent shall:

(1) Distribute a copy of this order to the general manager of each of its operating divisions;

(2) Notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondent which may affect compliance obligations arising out of this order, such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other similar change in the respondent; and

(3) Within ninety (90) days after service upon it of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with this order.

EXHIBIT A

(Respondent's Stationery)

DATE.

DEAR SIR: You are hereby advised that your contract dated ———, which requires you to purchase all or any percentage of your requirements of resorcinol from this company [or: which prevents you from purchasing or dealing in resorcinol manufactured, sold or distributed by others] [or: which has a term remaining in excess of one year], is hereby cancelled, terminated, voided, and rescinded by order of the Federal Trade Commission.

This notice is sent to you in accordance with an Order of the Federal Trade Commission dated ——— a copy of which is enclosed for your information. Koppers Company, Inc. has consented to the entry of this Order by the Commission. However, you will note that the Order specifically provides that this Company does not admit that it has violated any of the laws administered by the Commission.

Koppers Company, Inc. looks forward to serving you in the future.

Very truly yours,

(Signature of an authorized
official of respondent)

(REGISTERED MAIL)

IN THE MATTER OF

HAPPY MOTORS, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE TRUTH
IN LENDING AND THE FEDERAL TRADE COMMISSION ACT

Docket C-2111. Complaint, Dec. 2, 1971—Decision, Dec. 2, 1971

Consent order requiring a used car dealer of Miami, Fla., to cease violating the Truth in Lending Act by failing, in consumer credit transactions, to make all disclosures on the "Order Contract" in the form, manner, and amount required by Regulation Z of the Act.