

UNITED STATES DISTRICT COURT

DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO. 8119

UNITED STATES OF AMERICA

v.

MINNESOTA MINING AND MANUFACTURING COMPANY,  
BEHR-MANNING CORPORATION, THE CARBORUNDUM  
COMPANY, ARMOUR AND COMPANY, DUREX ABRASIVES  
CORPORATION, and THE DUREX CORPORATION

FINAL DECREE

September 13, 1950

WYZANSKI, D. J.

This cause having come on to be heard on Count 2 of the Amended Complaint and Answers thereto and the evidence presented on behalf of all parties and having been argued by counsel and fully considered by the Court, it is hereby

ORDERED, ADJUDGED, and DECREED that:

1. As used in this Decree:

"A Day" means ten weeks after entry of this Decree, unless within the period allowed by law an appeal shall be taken to the Supreme Court, in which event "A day" means ten weeks after that Court sends its mandate to this Court.

"B Day" means ten weeks after "A Day".

"C Day" means twenty weeks after "A Day".

"American manufacturing defendants" means Armour and Company, The Behr-Manning Corporation, and Minnesota Mining and Manufacturing Company, The Carborundum Company.

"Durex" means The Durex Corporation.

"Durex manufacturing subsidiaries" means Durex Abrasives, Ltd., Canadian Durex Abrasives, Ltd. and Durex Schleifmittel, G. m. b. H.

"Durex subsidiaries" means both Durex manufacturing subsidiaries and all other subsidiaries of Durex in the United States or in foreign countries including, for example, Australian Durex Products Pty. Ltd. Durex Sociedad Anonima Comercial e Industrial and Durex Lixas e Fitas Adesivas, Ltd.

"Export Company" means Durex Abrasives Corporation.

"Export Company subsidiaries" means all subsidiaries of the Export Company, including, for example, Abrasifs Durex, S. A. France and Durex de Mexico, S. A.

2. Defendants violated section 1 of the Sherman Act, 15 U.S.C. §1, in combining in agreements under which defendants or some of them organized and operated Durex and Durex subsidiaries, entered into the main patent agreement of May 23, 1929 [Ex. G1], granted licenses and took other action pursuant thereto, and made sundry temporary and permanent agreements for various areas, including, for example, markets affiliated with the British Empire, Australia, New Zealand, and various European countries, whereby, for a commission or otherwise, Durex or Durex subsidiaries supplied coated abrasives manufactured in part or in whole in foreign nations. By these agreements and actions undertaken by one or more of the defendants, pursuant to the combination of all defendants, all defendants conspired in restraint of trade and commerce in coated abrasives with foreign nations.

3. Defendants and all persons and corporations acting on behalf of them are enjoined from conspiring to restrain trade and commerce in coated abrasives with foreign nations and from participating in practices having the purpose or effect of continuing or renewing any of the violations described in paragraph 2 hereof. In particular they are enjoined from any joint action by two or more American manufacturers to establish or operate factories in foreign nations to supply coated abrasives.

4. The agreements summarily described in paragraph 2 are adjudged illegal and are cancelled. Before 3 day defendants shall file

in Court a statement listing the agreements so adjudged and reciting the action taken to cancel those agreements.

5. The American manufacturing defendants and the Export Company acted unlawfully in assigning foreign patents, granting licenses to manufacture thereunder, and circulating manufacturing know-how and like technical manufacturing information to Durex and Durex subsidiaries. Such actions are adjudged illegal. Before B day Durex and Durex subsidiaries shall transfer all such patents and licenses to the original transferor or its successor corporation without compensation; and shall file in Court a statement listing the patents and licenses affected by this paragraph and reciting the action taken to comply with the directions given in this paragraph.

6. In so far as the American manufacturing defendants assigned to Minnesota their foreign patents relating to waterproof sandpaper, to Carborundum their foreign patents relating to discs, to Behr-Manning their foreign patents relating to electrocoated sandpaper and to Armour their foreign patents relating to heat-treated garnet abrasives they acted in violation of section 1 of the Sherman Act. Before B day the present transferees of those patents shall transfer back all such patents to the original transferors or their successor corporations without compensation and shall file in Court a statement listing the patents, if any, affected by this paragraph and reciting the action taken to comply with the directions given in this paragraph.

7. Defendants acted unlawfully in allowing Durex and Durex manufacturing subsidiaries to use trade-marks and brand name registrations which had been originated by or were similar to the trade-marks and brand name registrations which were or are used by the American manufacturing defendants and the Export Company. Before B day Durex and Durex subsidiaries shall transfer all their trade-marks and brand name registrations to the Export Company without compensation and shall file in Court a statement listing the marks and registrations affected by this paragraph and reciting the action taken to comply with the directions given in this paragraph.

8. Before C day the American manufacturing defendants and Durex shall file in Court a proposed plan or series of plans whereby (a) Durex shall be dissolved, (b) the creditors of Durex shall be protected, (c) each of the Durex manufacturing subsidiaries shall be dissolved or transferred to one but not more than one of the American manufacturing defendants or transferred to a party outside this case (provided that in no event shall the party to which Canadian Durex Abrasives, Ltd. is transferred also be the transferee of Durex Abrasives, Ltd. or Durex Schleifmittel, G. m. b. H. and further provided that in no event shall the party to which Durex Abrasives, Ltd. is transferred also be the transferee of Durex Abrasives, Ltd. or Schleifmittel, G. m. b. H. and further provided that in no event shall the party to which Durex Abrasives, Ltd. is transferred also be the transferee of Canadian Durex Abrasives, Ltd. or Durex Schleifmittel, G. m. b. H.), (d) each of the Durex subsidiaries which is not a Durex manufacturing subsidiary shall be dissolved or transferred to the Export Company or to one or more of the American manufacturing defendants or to other parties, and (e) the remaining assets of Durex and the assets of any of its subsidiaries which are to be dissolved shall be distributed fairly and equitably and in a manner that negates the probability of an unlawful monopoly or restraint of trade.

9. Before B day the Export Company and the American manufacturing defendants shall enter into agreements that (a) allow any member to withdraw from the Export Company and to receive the appraised value of its shares and to withdraw from all obligations under the Export Agreement of May 23, 1929 at any time within two years after A day or at any time thereafter upon giving one year's written notice and (b) provide that the Export Company shall not discriminate in price between a distributor in a foreign nation and an exporter in the United States who offer to maintain substantially equivalent foreign sales offices, foreign stocks of coated abrasives and foreign promotional services.

10. Nothing in this Decree shall be construed to prohibit any

American manufacturing company from taking action apart from a combination or conspiracy with others and without monopolistic purpose or effect (a) to abandon in whole or in part its export trade to foreign nations or (b) to establish and operate factories in foreign nations to supply foreign markets.

11. Defendants shall pay costs.

12. Jurisdiction of this cause is retained for the purposes of enabling any of the parties to this Decree to apply to the Court at any time for such further orders and directions as may be appropriate for the correction, construction or carrying out of the Decree, (and in particular for modifying, supplanting or carrying out any plans of dissolution or transfer contemplated by paragraph 8) or for the change of the Decree in the light of legislative, judicial or factual developments.

13. Pursuant to F.R.C.P. 54, this Court having determined that there is no just reason for delay directs entry of this as a final judgment upon Count 2 of the Amended Complaint.

14. The aforesaid paragraphs of this Decree shall impose no obligation on defendants before A day.

Charles E. Wyzanski, Jr.  
United States District Judge