

## Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. Reddi-Wip, Inc., U.S. District Court, S.D. California, 1955 Trade Cases ¶68,187, (Oct. 28, 1955)

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United States v. Reddi-Wip, Inc.

1955 Trade Cases ¶68,187. U.S. District Court, S.D. California. Civil Action No. 17906-BH. Filed October 28, 1955. Case No. 1215 in the Antitrust Division of the Department of Justice.

### Clayton and Sherman Antitrust Acts

**Combinations and Conspiracies—Exclusive Dealing—Consent Decree—Practices Enjoined—Exclusive Dealing—Restrictions on Sales or Use.**—A seller of container components, ingredient components, and processing equipment used in producing cans which dispense prepared whipping cream was prohibited by a consent decree from entering into any agreement with any person (1) that such person shall not purchase, sell, or distribute any product competing with any product sold or distributed by the seller, (2) that the seller have the option to purchase any processing equipment sold to such person, (3) which in any manner restricts the sale or distribution within the United States of seller's trade-marked product to or within certain territories, markets, or customers, or (4) which in any manner restricts the uses to be made of any product purchased from the seller, except as necessary lawfully to protect any trade-mark right or trade secret.

**Combinations and Conspiracies—Exclusive Dealing—Consent Decree—Practices Enjoined—Tying Arrangements.**—A consent decree prohibited a seller of container components, ingredient components, and processing equipment used in producing cans which dispense prepared whipping cream from entering into any agreement with any person (1) that such person shall purchase container components, ingredient components, or processing equipment only from the seller or a source designated by the seller, (2) that such person shall not purchase container components, ingredient components, or processing equipment from any person other than the seller or a source designated by the seller, or (3) that the seller shall have the option to purchase any processing equipment sold to such person.

**Combinations and Conspiracies—Consent Decree—Practices Enjoined—Patent and Trade-Mark Agreements—Tying Provisions.**—A seller of container components, ingredient components, and processing equipment used in producing cans which dispense prepared whipping cream was prohibited by a consent decree from entering into any agreement with any person relating to patents or trade-marks on any condition or understanding that such other person shall purchase from or resell to the seller any container components, ingredient components, processing equipment, or any other commodity or any specified volume, quota, percentage, or value of any of them.

**Department of Justice Enforcement and Procedure—Consent Decree—Specific Relief—Sale of Product.**—A seller of container components, ingredient components, and processing equipment used in producing cans which dispense prepared whipping cream was ordered by a consent decree to offer for sale and to sell dispensing heads on a nondiscriminatory basis to any person desiring to purchase them for use in the fluffed fresh dairy cream field, so long as it or any affiliate of the seller sells dispensing heads.

**Department of Justice Enforcement and Procedure—Consent Decrees—Permissive Provision—Trade-Mark Practices.**—A consent decree entered against a seller of container components, ingredient components, and processing equipment used in producing cans which dispense prepared whipping cream provided that nothing in the decree shall be deemed to prohibit the seller from (1) requiring a trade-mark licensee to use the stabilizer manufactured by or for the seller unless such licensee can obtain an identical stabilizer from another source or (2) issuing or maintaining trade-mark licenses which require use of materials designated by description of functional characteristics or properties.

For the plaintiff: Stanley N. Barnes, Assistant Attorney General, Victor H. Kramer, James M. McGrath, W. D. Kilgore, Jr., Vincent A\* Gorman, and John Ford Baecher.

For the defendant: Hill and Attias, by Irving Hill.

### Final Judgment

BEN HARRISON, District Judge [ *In full text*]: Plaintiff, United States of America, having filed its Complaint herein on February 28, 1955; defendant Reddi-Wip, Inc. having appeared and filed its Answer denying the substantive allegations thereof and plaintiff and defendant, by their attorneys, having severally 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 evidence or an admission by defendant of any wrongful act;

Now, therefore, before any testimony has been taken herein, 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

[ *Clayton and Sherman Acts*]

This Court has jurisdiction of the subject matter herein and of the parties hereto. The Complaint states claims against defendant under Section 1 of the Act of Congress of July 2, 1890, entitled "An act to protect trade and commerce against unlawful restraints and monopolies," commonly known as the Sherman Act, as amended, and under Section 3 of the Act of Congress of October 15, 1914, entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," commonly known as the Clayton Act, as amended.

#### II

[ *Definitions*]

As used in this Final Judgment:

- (A) "Defendant" shall mean defendant Reddi-Wip, Inc., a corporation organized and existing under the laws of the State of Missouri;
- (B) "Reddi-Wip" shall mean a prepared fluffed fresh dairy cream contained in a single service disposable can (on which the name Reddi-Wip is affixed) from which the contents are expelled by the pressure of gas through a disposable dispensing valve with cap affixed to the can;
- (C) "Dispensing heads" shall mean the valves and caps used as a part of the Reddi-Wip container;
- (D) "Container components" shall mean the cans and Dispensing heads in which Reddi-Wip is marketed;
- (E) "Ingredient components" shall mean any and all of the ingredients of Reddi-Wip including cream, skim milk, and other dairy products, whipping or other gases, glucose, sugar, flavorings and stabilizer, and all ingredients thereof irrespective of any claims to trade secrets pertaining thereto;
- (F) "Processing Equipment" shall mean the machinery, apparatus and utensils used in manufacturing or processing and packaging Reddi-Wip;
- (G) "Patents" shall mean each and all United States Letters Patent and applications therefore, heretofore or hereafter issued or filed, in which defendant has any interest; relating to Reddi-Wip or to any of the container components, ingredient components and processing equipment;
- (H) "Franchise contracts" shall mean the agreements heretofore entered into between defendant and other persons for the sale by defendant and the purchase by the others of any of the container components, ingredient components and processing equipment with the right in the purchaser to market Reddi-Wip;
- (I) "Trademarks" shall mean each and all trademarks and trade names heretofore or hereafter used or owned by or registered for defendant relating to Reddi-Wip or to any of the container, components', ingredient components and processing equipment;

(J) "Trademark Licenses" shall mean agreements hereafter made by defendant permitting the use by any other person of any trademarks;

(K) "Person" shall mean an individual, partnership, firm, association corporation or any other business or legal entity.

### III

#### [ *Applicability of Judgment* ]

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

### IV

#### [ *Exclusive Dealing and Tying Arrangements* ]

(A) Defendant is enjoined and restrained from entering into, maintaining, adhering to, claiming any rights under or enforcing any contract, agreement or understanding with any person:

(1) That such person shall not purchase, sell or distribute any product competing with Reddi-Wip or with any product sold or distributed by defendant;

(2) That such person shall purchase container components, ingredient components or processing equipment only from defendant or a source designated by defendant;

(3) That such person shall not purchase container components, ingredient components or processing equipment from any person other than defendant, or a source designated by defendant;

(4) That defendant have the option to purchase any processing equipment sold to such person;

(5) Which in any manner restricts the sale or distribution within the United States of Reddi-Wip to or within certain territories, markets or customers;

(6) Which in any manner restricts the uses to be made of any product purchased from defendant, except as necessary lawfully to protect any trademark right or trade secret.

(B) Defendant is enjoined and restrained from entering into, adhering to or furthering, directly or indirectly, any course of conduct for the purpose of imposing or which, in fact, makes operative any restriction or limitation set forth in any of the subparagraphs of subsection (A) of this Section IV.

### V

#### [ *Patent and Trademark Agreements* ]

Defendant is enjoined and restrained from entering into, maintaining, adhering to or claiming any rights under any contract, agreement or understanding with any person relating to patents or trademarks on or accompanied by any condition, agreement or understanding that such other person shall purchase from or resell to defendant any container components, ingredient components, processing equipment or any other commodity, or any specified volume, quota, percentage or value of any of them.

### VI

#### [ *Sales and Cancellation of Contracts* ]

Defendant is ordered and directed:

(A) So long as it or any affiliate of defendant sells dispensing heads, to offer for sale and to sell such items on a non-discriminatory basis to any person desiring to purchase them for use in the fluffed fresh dairy cream field;

(B) To cancel each of its franchise contracts.

## VII

### [ *Permissive Trademark Practices* ]

Nothing in this Final Judgment shall be deemed to prohibit defendant from:

(A) Requiring a trademark licensee to use the stabilizer manufactured by or for the defendant unless such licensee can obtain an identical stabilizer from another source. In any proceeding under this Final Judgment wherein the trademark license of defendant is in issue, defendant shall have the burden affirmatively to go forward and establish that the stabilizer can be obtained only from the defendant.

(B) Issuing or maintaining trademark licenses which require use of materials designated by description of functional characteristics or properties.

## VIII

### [ *Inspection and Compliance* ]

For the purpose of securing compliance with this Final Judgment and for no other purpose, duly authorized representatives of the Department of Justice shall, on written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to the defendant made to its principal office, be permitted, subject to any legally recognized privilege:

(A) Access, during the office hours of the defendant, to all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of the defendant relating to any matters contained in this Final Judgment;

(B) Subject to the reasonable convenience of the defendant and without restraint or interference from the defendant, to interview officers or employees of the defendant, who may have counsel present, regarding any such matters.

Upon written request of the Attorney General, or the Assistant Attorney General in charge of the Antitrust Division, the defendant 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 permitted 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 Department of Justice except in the course of legal proceedings in which the United States is a party for the purpose of securing compliance with this Final Judgment or as otherwise required by law.

## IX

### [ *Jurisdiction Retained* ]

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 and directions as may be necessary or appropriate for the construction or carrying out of this Final Judgment, for the amendment or modification of any of the provisions thereof, for the enforcement of compliance therewith, and for the punishment of violations thereof.

## X

### [ *Effective Date* ]

This Final Judgment shall become effective ninety (90) days after entry herein.