

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

_____)
In the Matter of)
)
UNION OIL COMPANY OF)
CALIFORNIA,)
)
a corporation.)
_____)

PUBLIC
Docket No. 9305

JOINT STIPULATIONS OF LAW AND FACT

In accordance with the Scheduling Order in this matter, Complaint Counsel and Respondent Union Oil Company of California (“Unocal”) stipulate to and jointly request that Your Honor allow the stipulations of law and fact listed below. The parties respectfully submit that allowing these stipulations will result in a more efficient presentation of evidence.

I. STIPULATIONS OF LAW

1. Unocal is, and at all relevant times has been, a corporation as “corporation” is defined by Section 4 of the FTC Act, 15 U.S.C. § 44.

2. At all times relevant herein, Unocal has been, and is now, engaged in commerce as “commerce” is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

3. The offense of monopolization consists of “(1) the possession of monopoly power in the relevant market and (2) the willful acquisition or maintenance of that power as distinguished from growth or development as a consequence of a superior product,

business acumen, or historic accident.” *United States v. Grinnell, Corp.*, 384 U.S. 563, 570-71 (1966).

4. The essential elements of an attempt to monopolize are: (1) specific intent to control prices or destroy competition in some part of commerce; (2) predatory or anticompetitive conduct directed to accomplishing the unlawful purpose; and (3) a dangerous probability of success. *Spectrum Sports, Inc. v. McQuillan*, 506 U.S. 447, 456 (1993).

II. STIPULATIONS OF FACT

1. Union Oil Company of California is a public corporation organized, existing, and doing business under, and by virtue of, the laws of California.

2. Unocal’s office and principal place business is located at 2141 Rosecrans Avenue, Suite 4000, El Segundo, California 90245.

3. Since 1985, Union Oil Company of California has done business under the name “Unocal.”

4. Prior to 1997, Unocal owned and operated refineries in California as a vertically integrated producer, refiner, and marketer of petroleum products.

5. The testimony of the following witnesses may be designated and offered at trial in lieu of live testimony, subject to the parties’ objections and counter-designations: Nelson Chan, Reza Mahdavi, Catherine Witherspoon, Mark Boone, Bruce Irion, Robert Millar, Edwin Zimmerman, Kess Alley, Stephen Lipman, William Mallett, Neil Schmale, Michael Thacher, Charles Williamson, Jim Aguila, Don Bea, Kevin Cleary, Steve Hancock, Albert Hochhauser, Victor Iberg, Dave Jacober, Charles Martinez, Gavin McHugh, Neil Moyer, Ken Riley, Diane Sinclair, Jeff Toman, Jim Uihlein, Steven Welstand, John Wood, Douglas Youngblood, Gary Youngman, Michael Wang, Gina Grey, Jan Sharpless, and John J. Wise.

6. Unocal is the owner, by assignment, of the following patents relating to low emissions, reformulated gasoline: United States Patent No. 5,288,393 (issued February 22, 1994); United States Patent No. 5,593,567 (issued January 14, 1997); United States Patent No. 5,653,866 (issued August 5, 1997); United States Patent No. 5,837,126 (issued November 17, 1998); United States Patent No. 6,030,521 (issued February 29, 2000).

7. Unocal's five patents, United States Patent No. 5,288,393 (issued February 22, 1994); United States Patent No. 5,593,567 (issued January 14, 1997); United States Patent No. 5,653,866 (issued August 5, 1997); United States Patent No. 5,837,126 (issued November 17, 1998); United States Patent No. 6,030,521 (issued February 29, 2000), all share the identical specification.

8. United States Patent No. 5,288,393 (issued February 22, 1994) is valid.

9. United States Patent No. 5,593,567 (issued January 14, 1997) is valid.

10. United States Patent No. 5,653,866 (issued August 5, 1997) is valid.

11. United States Patent No. 5,837,126 (issued November 17, 1998) is valid.

12. United States Patent No. 6,030,521 (issued February 29, 2000) is valid.

13. Unocal's five patents, United States Patent No. 5,288,393 (issued February 22, 1994); United States Patent No. 5,593,567 (issued January 14, 1997); United States Patent No. 5,653,866 (issued August 5, 1997); United States Patent No. 5,837,126 (issued November 17, 1998); United States Patent No. 6,030,521 (issued February 29, 2000), all arise from the same scientific discovery and are related in that they all claim priority based on patent application No. 07/628,488, filed on December 13, 1990.

14. Unocal's five patents, United States Patent No. 5,288,393 (issued February 22, 1994); United States Patent No. 5,593,567 (issued January 14, 1997); United States Patent No. 5,653,866 (issued August 5, 1997); United States Patent No. 5,837,126 (issued November 17, 1998); United States Patent No. 6,030,521 (issued February 29, 2000), claim priority to the same invention date.

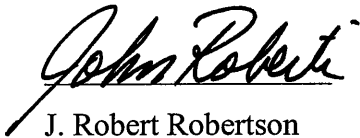
15. On January 23, 2002, Unocal sued Valero Energy Company in the Central District of California for willful infringement of both the '393 patent and the '126 patent. In its complaint, Unocal seeks damages at the rate of 5.75 cents per gallon for all infringing gallons, and treble damages for willful infringement.

16. Unocal has entered into licensing arrangements

Respectfully Submitted,

Counsel Supporting the Complaint

Counsel For Respondent



J. Robert Robertson
Chong S. Park
John Roberti
Peggy Bayer Femenella
David Conn
Lisa Fialco
Sean Gates
Dean Graybill
John Martin
Lore Unt

Bureau of Competition
Federal Trade Commission
Washington, D.C. 20580
(202) 326-2372
Facsimile (202) 326-3496

Martin R. Lueck
David W. Beehler
Sara A. Poulos
K. Craig Wildfang
David P. Swenson
Diane L. Simerson
Bethany D. Krueger

Robins, Kaplan, Miller & Ciresi LLP
2800 LaSalle Plaza
800 LaSalle Avenue
Minneapolis, MN 55402-2015

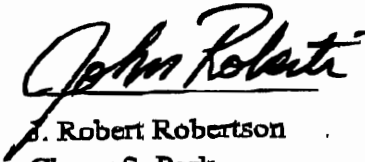
Joseph Kattan
J. Christopher Wood
Gibson, Dunn & Crutcher LLP
1050 Connecticut Avenue, N.W.
Washington, DC 20036-5306

Dated: October 12, 2004

Respectfully Submitted,

Counsel Supporting the Complaint

Counsel For Respondent



J. Robert Robertson
Chong S. Park
John Roberti
Peggy Bayer Femenella
David Conn
Lisa Fialco
Sean Gates
Dean Graybill
John Martin
Lore Unt

Bureau of Competition
Federal Trade Commission
Washington, D.C. 20580
(202) 326-2372
Facsimile (202) 326-3496



Martin R. Lueck
David W. Bechler
Sara A. Poulos
K. Craig Wildfang
David P. Swenson
Diane L. Simerson
Bethany D. Krueger

Robins, Kaplan, Miller & Ciresi LLP
2800 LaSalle Plaza
800 LaSalle Avenue
Minneapolis, MN 55402-2015

Joseph Kattan
J. Christopher Wood
Gibson, Dunn & Crutcher LLP
1050 Connecticut Avenue, N.W.
Washington, DC 20036-5306

Dated: October 12, 2004

CERTIFICATE OF SERVICE

I, Terri Martin hereby certify that on October 12, 2004, I caused a copy of Complaint Counsel's and Respondent's Joint Stipulations of Facts and Law to be served upon the below listed persons:

VIA HAND DELIVERY TO:

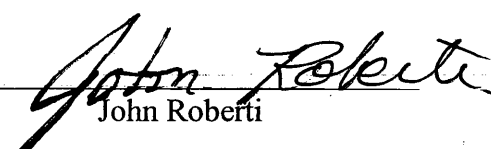
The Honorable D. Michael Chappell
Administrative Law Judge
U.S. Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580

VIA FACSIMILE TO:

David W. Beehler, Esq.
Robins, Kaplan, Miller & Ciresi LLP
2800 LaSalle Plaza
800 LaSalle Avenue
Minneapolis, MN 55402-2015

VIA FACSIMILE TO:

Joseph Kattan, Esq.
Gibson, Dunn & Crutcher LLP
1050 Connecticut Avenue, N.W.
Washington, DC 20036-5306


John Roberti