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Civil

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

THEATRE ENTERPRISES, INC.

vs.

PARAMOUNT FILM DISTRIBUTING CORP.,
LOEW'S INCORPORATED, RKO RADIO PICTURES, INC.,
TWENTIETH CENTURY-FOX FILM CORPORATION, UNIVERSAL FILM EXCHANGES, INC.,
UNITED ARTISTS CORPORATION, WARNER BROS. PICTURES, INC.,
WARNER BROS. PICTURES DISTRIBUTING CORPORATION,
WARNER BROS. CIRCUIT MANAGEMENT CORPORATION, COLUMBIA PICTURES CORPORATION.

CIVIL ACTION NO. 10734

FILED

MAR 20 1950

GEORGE BRODIECK, Clerk
By _____ Dpty Clerk

COMPLAINT

TO THE HONORABLE THE JUDGES OF THE SAID COURT:

The plaintiff above named brings this civil action against the defendants above named and complains and alleges as follows:

FIRST CAUSE OF ACTION

1. This action is brought under sections 4 and 16 of the Clayton Act of October 15, 1914 (15 U.S.C.A. 15,26), sections 1 and 2 of the Sherman Act of July 2, 1890 (15 U.S.C.A. 1, 2) and section 1 of the Robinson-Patman Act of June 19, 1931 (15 U.S.C.A. 13).

2. Plaintiff is a Corporation duly organized and existing under the laws of the State of Maryland, having its principal place of business at 302 Park Avenue, Baltimore, Maryland, and is engaged in the business of exhibiting motion pictures at its Great Theatre located at Reisterstown Road and Rogers Avenue in the said city.

3. Paramount Film Distributing Corporation is a

① Filed 10 March, 1951.

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Corporation organized and existing under the laws of the State of New York and is engaged in the business of producing, distributing and exhibiting motion pictures in interstate commerce, either directly or through subsidiary or associated companies, and has an agent and transacts business in the Eastern District of Pennsylvania, and has an office in said District at 248 North 12th Street, Philadelphia.

4. Loew's Incorporated is a Corporation organized and existing under the laws of the State of Delaware, and is engaged in the business of producing, distributing and exhibiting motion pictures in interstate commerce, either directly or through subsidiary or associated companies, and has an agent and transacts business in the Eastern District of Pennsylvania, and has an office in said District at 1253 Summer Street, Philadelphia.

5. RKO Radio Pictures, Inc. is a Corporation organized and existing under the laws of the State of Delaware and is engaged in the business of producing and distributing motion pictures in interstate commerce, either directly or through subsidiary or associated companies, and has an agent and transacts business in the Eastern District of Pennsylvania, and has an office in said District at 250 North 13th Street, Philadelphia.

6. Twentieth Century-Fox Film Corporation is a Corporation organized and existing under the laws of the State of New York, and is engaged in the business of producing, distributing and exhibiting motion pictures in interstate commerce, either directly or through subsidiary or associated companies, and has an agent and transacts business in the Eastern District of Pennsylvania, and has an office in said District at 302 North 13th Street, Philadelphia.

7. Universal Film Exchanges, Inc. is a Corporation

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organized and existing under the laws of the State of Delaware and is engaged in the business of distributing motion pictures in interstate commerce and has an agent and transacts business in the Eastern District of Pennsylvania, and has an office in said District at 251 North 13th Street, Philadelphia.

8. United Artists Corporation is a Corporation organized and existing under the laws of the State of Delaware and is engaged in the business of distributing motion pictures in interstate commerce and has an agent and transacts business in the Eastern District of Pennsylvania, and has an office in said District at 302 North 13th Street, Philadelphia.

9. Warner Bros. Pictures, Inc., is a Corporation organized and existing under the laws of the State of Delaware and is engaged in the business of producing, distributing and exhibiting motion pictures in interstate commerce, either directly or through subsidiary companies, and has an agent and transacts business in the Eastern District of Pennsylvania, and has an office in said District at 1028 Market Street, Philadelphia.

10. Warner Bros. Pictures Distributing Corporation, a wholly owned subsidiary of Warner Bros. Pictures, Inc., is a Corporation organized and existing under the laws of the State of New York and is engaged in interstate commerce, either directly or through subsidiary companies, in the business of distributing and exhibiting motion pictures, and has an agent and transacts business in the Eastern District of Pennsylvania, and has an office in said District at 230 W. 13th Street, Philadelphia.

11. Warner Bros. Circuit Management Corporation, a wholly owned subsidiary of Warner Bros. Pictures, Inc., is a Corporation organized and existing under the laws of the State of New York and is engaged in interstate commerce, either directly or

through subsidiary companies, in the business of distributing and exhibiting motion pictures and has an agent and transacts business in the Eastern District of Pennsylvania, and has an office in said District at 1028 Market Street, Philadelphia.

12. Columbia Pictures Corporation is a corporation organized and existing under the laws of the State of New York having its principal place of business at 729 Seventh Avenue, New York City, New York, and is engaged in the business of producing and distributing motion pictures in interstate commerce, either directly or through subsidiary or associated companies in various parts of the United States and in foreign countries, and has an agent and transacts business in the Eastern District of Pennsylvania, and has an office in said District at 1240 Vine Street, Philadelphia.

13. The motion picture business consists of three departments or phases, to wit,

- (1) Production or manufacture of pictures;
- (2) Distribution or licensing of pictures;
- and,
- (5) Exhibition of pictures.

14. Said business in all its phases constitutes a part of interstate commerce.

15. The defendants produce and distribute approximately 95% of the first class feature motion pictures produced in the United States.

16. No motion picture exhibitor can successfully operate a first-run feature motion picture theatre in the United States without being supplied with pictures produced or distributed by the defendants.

17. The Crest Theatre is properly located and adequately equipped for exhibition of first class motion pictures on first-run

having 1,600 seats and the finest appointments and equipment, including the most modern type of air-conditioning and sound. The said theatre in all respects is comparable to and in many respects, particularly as to its extensive free parking facilities and its large television lounge, is superior to any theatre in downtown Baltimore or its environs.

18. There are seven first-run theatres in down-town Baltimore including one theatre operated by the defendant, Warner Brothers Circuit Management Corporation, and two theatres operated by the defendant, Loew's Inc. For a number of years past these said seven theatres have had the available first-run product divided in an arbitrary and rigid manner, with the result that each theatre in effect has had an illegal franchise for that product allocated to it and with the further result that no new exhibitor may compete in the first-run field. This arrangement has been made possible only by the agreement and connivance of the defendants in pursuance of their own conspiracy to dominate the distribution and exhibition of motion pictures in the City of Baltimore.

19. Plaintiff since October, 1948, has attempted to obtain a supply of first-run motion pictures for exhibition at the Crest Theatre but defendants have failed and refused to license any such pictures to it.

20. As the result of the failure and refusal of the defendants to license their pictures for first-run exhibition at the Crest Theatre, plaintiff, without abandoning its claim to first-run product but in an attempt to open its theatre, keep it in operation and thus minimize damages, sought and was able in February, 1949, to license subsequent-run product for the Crest, but only under the terms and with the results set forth in the Second Cause of Action stated below in this Complaint.

21. There is no substantial competition between the Crest Theatre and the first-run theatres in down-town Baltimore.

22. The refusal of the defendants to license first-run pictures to the Crest Theatre was in furtherance of the defendants' conspiracy to dominate the distribution and exhibition of motion pictures in Baltimore and elsewhere and constitutes an unlawful restraint of trade and competition in interstate commerce in violation of the Clayton Act and the Sherman Act.

23. The United States of America has instituted an action on its behalf against the defendants herein entitled United States of America v. Paramount Pictures, Inc., et al, in the United States District Court for the Southern District of New York, in which it charged these defendants with a conspiracy to violate sections 1 and 2 of the Sherman Anti-Trust Act. The said District Court has entered its decree in which it found these defendants guilty of a nationwide conspiracy to violate the Sherman Anti-Trust Act, which findings have been affirmed by the Supreme Court of the United States (92 L. ed. 632). Further, on February 8, 1950, the said District Court entered its reformed final decree in the said case.

24. As the result of the failure and refusal of the defendants to license their pictures for first-run exhibition at the Crest Theatre, plaintiff has suffered damages in the amount of \$205,000.

SECOND CAUSE OF ACTION

25. The averments contained in paragraphs 1 to 23 inclusive are hereby incorporated by reference.

26. Although the defendants, on and after February 26, 1949, did license subsequent-run product to the Crest Theatre, they unlawfully discriminated against the plaintiff by exacting from it a film rental greater than that paid to them by comparable or inferior theatres for similar product, by withholding reasonable clearance between theatres actually presently in substantial competition and by imposing unreasonable and discriminatory clearance between theatres not in substantial competition.

27. This discriminatory conduct of the defendants, in rela-

tion to the licensing of subsequent run pictures to the Crest, was the result of an unlawful conspiracy on the part of the defendants to dominate the distribution and exhibition of motion pictures in the City of Baltimore and elsewhere and constitutes an unlawful restraint of trade and competition in interstate commerce in violation of the Clayton Act and Sherman Act.

28. As the result of the discriminatory conduct of the defendants with regard to their licensing of subsequent-run pictures to the Crest Theatre, plaintiff has suffered damages in the amount of \$52,000.

WHEREFORE, the plaintiffs demand:-

1. That summonses be issued and directed to each of the defendants commanding them to appear and answer the allegations contained in this complaint and to abide by and perform such orders and decrees as the Court may make in the premises.

2. That the defendants be enjoined from imposing clearance restrictions on license agreements with the plaintiff's Crest Theatre in favor of theatres in down-town Baltimore and that defendants be ordered forthwith and perpetually thereafter to license pictures to the plaintiff free of said clearance provisions.

3. That the defendants be enjoined from discriminating against plaintiff in any way in the licensing of their motion pictures and that the defendants be enjoined from withholding reasonable clearance between the plaintiff's Crest Theatre and those theatres with which it is presently in substantial competition.

4. That the defendants be ordered to pay to plaintiff the full cost of this suit and include as a part thereof a reasonable attorneys' fee for the services of plaintiff's attorneys.

5. That the plaintiff be awarded damages for the loss of

its first-run business in the amount of \$205,000 to be trebled under the provisions of the Sherman Anti-Trust Act; or, in the alternative, damages for the loss of its subsequent-run business in the amount of \$52,000 to be trebled under the provisions of the Sherman Anti-Trust Act.

6. That the plaintiff be afforded such further relief as the court shall deem just and proper.

GRAY, ANDERSON, SCHAFER & ROME

BY:

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William A. Gray
Attorneys for Plaintiff