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In Equity No. 3736-992

**In the District Court of the United States
for the Northern District of Texas
Dallas Division**

UNITED STATES OF AMERICA, PETITIONER

v.

INTERSTATE CIRCUIT, INC., ET AL., DEFENDANTS

AMENDED PETITION

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Special Assistants to the Attorney General.

Filed May 7, 1937

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the Northern District of Texas, Dallas
Division**

In Equity No. 3736-992

UNITED STATES OF AMERICA, PETITIONER

v.

INTERSTATE CIRCUIT, INC., TEXAS CONSOLIDATED
THEATRES, INC., KARL HOBLITZELLE, R. J. O'DON-
NELL, PARAMOUNT PICTURES DISTRIBUTING COM-
PANY, INC., VITAGRAPH, INC., RKO RADIO
PICTURES, INC., COLUMBIA PICTURES CORPORATION,
UNITED ARTISTS CORPORATION, UNIVERSAL FILM
EXCHANGES, INC., METRO-GOLDWYN-MAYER DIS-
TRIBUTING CORPORATION, METRO-GOLDWYN-MAYER
DISTRIBUTING CORPORATION OF TEXAS, TWENTIETH
CENTURY-FOX FILM CORPORATION, AND TWEN-
TIETH CENTURY-FOX FILM CORPORATION OF TEXAS,
DEFENDANTS

AMENDED PETITION

The United States of America by Clyde O. Eastus, United States Attorney for the Northern District of Texas, acting under the direction of the Attorney General, brings this proceeding in equity against the defendants above named and for an

amended petition alleges upon information and belief as follows:

1. That Interstate Circuit, Inc., is a corporation organized and existing under the laws of the State of Delaware and has its principal place of business in the Majestic Theatre Building, Dallas, Texas;
2. That Texas Consolidated Theatres, Inc., is a corporation organized and existing under the laws of the State of Delaware and has its principal place of business in the Majestic Theatre Building, Dallas, Texas;
3. That Karl Hoblitzelle is a resident of the city of Dallas, Texas;
4. That R. J. O'Donnell is a resident of the city of Dallas, Texas;
5. That Paramount Pictures Distributing Company, Inc., is a corporation organized and existing under the laws of New Jersey and has its principal place of business at 1501 Broadway, in the city of New York, New York;
6. That Vitagraph, Inc., is a corporation organized and existing under the laws of the State of New York and has its principal place of business at 321 West 44th Street, in the city of New York, New York;
7. That RKO Radio Pictures, Inc., is a corporation organized under the laws of the State of Delaware and has its principal place of business in Radio City in the city of New York, New York; that on or about December 31, 1936, it succeeded to all the assets and assumed all the liabilities of

RKO Distributing Corporation, likewise a corporation of the State of Delaware, which was named as a defendant in the petition herein;

8. That Columbia Pictures Corporation is a corporation organized and existing under the laws of the State of New York and has its principal place of business at 729 Seventh Avenue in the city of New York, New York;

9. That United Artists Corporation is a corporation organized under the laws of the State of Delaware and has its principal place of business at 729 Seventh Avenue in the city of New York, New York;

10. That Universal Film Exchanges, Inc., is a corporation organized and existing under the laws of the State of Delaware and has its principal place of business at Rockefeller Center in the city of New York, New York;

11. That Metro-Goldwyn-Mayer Distributing Corporation is a corporation organized and existing under the laws of the State of New York and has its principal place of business at 1540 Broadway in the city of New York, New York;

12. That Metro-Goldwyn-Mayer Distributing Corporation of Texas is a corporation organized and existing under the laws of the State of Texas and has its principal place of business at 2013 Jackson Street in the city of Dallas, Texas;

13. That Twentieth Century-Fox Film Corporation is a corporation organized and existing under

the laws of the State of New York and has its principal place of business at 444 West 56th Street in the city of New York, New York;

14. That Twentieth Century-Fox Film Corporation of Texas is a corporation organized and existing under the laws of the State of Texas and has its principal place of business at 1801 Wood Street in the City of Dallas, Texas;

15. That the defendant, Interstate Circuit, Inc., is engaged in the business of exhibiting motion pictures in the State of Texas and operates forty-three motion picture theatres located in the cities of Dallas, Houston, San Antonio, Fort Worth, Galveston, and Austin;

16. That the defendant, Texas Consolidated Theatres, Inc., is engaged in the business of exhibiting motion pictures in the States of Texas and New Mexico and operates sixty motion picture theatres in the cities of Abilene, Amarillo, Breckenridge, Brownsville, Brownwood, Corsicana, Denison, Denton, Eastland, El Paso, Harlingen, McCaulley, Mercedes, Mexia, Paris, Ranger, Temple, Tyler, Vernon, Waco, and Wichita Falls, Texas, and six motion picture theatres in the city of Albuquerque, New Mexico,

17. That the defendant, Karl Hoblitzelle, is president of both Interstate Circuit, Inc., and Texas Consolidated Theatres, Inc., and the defendant, R. J. O'Donnell, is general manager of both of said corporations, and that said defendants, Hoblitzelle

and O'Donnell, as president and general manager, respectively, of both of said corporations, are in active charge of the management and operation of the businesses of said Interstate Circuit, Inc., and Texas Consolidated Theatres, Inc.;

18. That the defendants, Interstate Circuit, Inc., Texas Consolidated Theatres, Inc., Hoblitzelle and O'Donnell, are sometimes hereinafter referred to as the "exhibitor defendants";

19. That the defendants, Paramount Pictures Distributing Company, Inc., Vitagraph, Inc., RKO Radio Pictures, Inc., Columbia Pictures Corporation, United Artists Corporation, Universal Film Exchanges, Inc., Metro-Goldwyn-Mayer Distributing Corporation, Metro-Goldwyn-Mayer Distributing Corporation of Texas, Twentieth Century-Fox Film Corporation, and Twentieth Century-Fox Film Corporation of Texas are engaged in the business of distributing motion picture films in interstate commerce throughout the United States, including the States of Texas and New Mexico; that their operations in such interstate commerce consist in soliciting from exhibitors of motion pictures in Texas and New Mexico applications for licenses to exhibit films; the forwarding of such applications for licenses to their respective principal offices in the city of New York; the granting in New York of said applications; the shipment of films from laboratories located in certain cities outside of the States of Texas and New Mexico to the film ex-

change in Texas operated by each of said distributors nearest the location of the particular exhibitor; the delivery by the film exchange of said films to said exhibitors for exhibition; the collection by the exchange of the rental charge for the exhibition of the films as provided in the licenses therefor; the repossession by the exchange of the films following their exhibition by said exhibitors; the delivery of said films to other exhibitors in the same locality pursuant to similar licenses; and, following the exhibition of the films in the territory in Texas and New Mexico served by said exchanges, the re-shipment thereof to said laboratories located outside of Texas and New Mexico, as aforesaid;

20. That the defendants named in Paragraph Nineteenth hereof control the licensing and distribution in interstate commerce throughout the United States, including the States of Texas and New Mexico, of more than 80% of the high class feature films available for exhibition within the United States. The defendants named in Paragraph Nineteenth hereof are sometimes hereinafter referred to as the "distributor defendants";

21. That motion picture theatres are generally classified as (a) first run houses, meaning the theatre giving the first exhibition or run of feature pictures in the city or locality in which it is located, and (b) subsequent run houses, meaning theatres which exhibit feature pictures which previously had been exhibited or run one or more times in

another motion picture theatre or in other motion picture theatres in the same city or district; that higher rentals are charged to exhibitors for first run feature pictures and greater revenue is derived by the "distributor defendants" from licensing films for first runs or first exhibitions than from licensing the same films for second or subsequent runs or exhibitions in the same city or locality; that appeal to the public of second or subsequent run houses arises (a) because of the low admission charge made, and (b) because of the fact that it is sometimes customary for said second or subsequent run houses to offer at the same showing two feature films for the same price of admission;

22. That the defendant, Interstate Circuit, Inc., operates first run theatres in the cities of Dallas, Houston, San Antonio, Fort Worth, Austin, and Galveston, which are the largest cities in the State of Texas and at which said defendant charges after 6 o'clock in the evening a regular admission price of 40¢ or more for each adult. The defendant, Texas Consolidated Theatres, Inc., operates first run houses in the cities of Waco, Wichita Falls, Tyler, Amarillo, and El Paso, Texas, and in Albuquerque, New Mexico, at which it likewise charges a regular admission price after 6 o'clock in the evening of 40¢ or more for each adult; that both of said defendants, Interstate Circuit, Inc., and Texas Consolidated Theatres, Inc., operate second or subsequent run theatres in the cities in Texas and New

Mexico named in Paragraphs Fifteenth and Sixteenth hereof;

23. That, prior to the acts of the defendants hereinafter described numerous other persons, firms and corporations operated second or subsequent run houses for the exhibition of motion pictures in said cities in Texas and New Mexico named in Paragraphs Fifteenth and Sixteenth hereof, at which theatres said persons, firms and corporations charged regular admission prices after 6 o'clock in the evening of 20¢ or less for each adult and often exhibited two feature films at the same showing and for a single admission price; that, prior to the acts of the defendants hereinafter described, said persons, firms and corporations operating said second or subsequent run theatres in said cities were able to deal with the distributor defendants in obtaining licenses for the exhibition of feature films in the ordinary and customary manner of business and without having any restraints or restrictions as to the manner in which said feature films were to be exhibited or the price to be charged at their respective theatres imposed upon them; and that by charging admission prices after 6 o'clock in the evening of 20¢ or less for each adult and by often exhibiting two feature films for the same price of admission, said persons, firms and corporations had been able to conduct their respective businesses with profit to themselves and to the satisfaction of the attending public;

24. That for several years past the defendants, Interstate Circuit, Inc., and Texas Consolidated Theatres, Inc., have enjoyed a virtual monopoly in the business of first run exhibitions of feature films in the cities mentioned in Paragraph Twenty-second hereof and have been in active competition in the business of second or subsequent run exhibition of motion picture films with other persons, firms and corporations similarly engaged in the cities mentioned in Paragraphs Fifteenth and Sixteenth hereof;

25. That since in or about April, 1934, the defendants herein have been and now are engaged in a combination, conspiracy and agreement to restrain trade and commerce in motion picture films and to monopolize and attempt to monopolize the exhibition of said motion picture films in the States of Texas and New Mexico in violation of an act of Congress approved July 2, 1890, entitled "An Act to Protect Trade and Commerce Against Unlawful Restraints and Monopolies," and of the acts amendatory thereof and supplemental thereto. The plan and purposes of and means of effecting said combination, agreement and conspiracy were and are as follows:

That the exhibitor defendants, well knowing that they were the largest licensees of feature films for first run exhibition in the State of Texas from the distributor defendants, and well knowing that no person, firm or corporation operating a second or

subsequent run house in any one of the cities specifically named in Paragraph Twenty-second hereof could conduct his or its business successfully without exhibiting some feature films distributed by some or all of the distributor defendants herein, in order to strengthen their monopoly in first run exhibition of feature films in said cities and to further their attempts to monopolize the business of exhibiting feature films in second or subsequent run houses operated by them in said cities, would advise the said distributor defendants that unless they would insert in all licensing agreements made with persons, firms and corporations operating second or subsequent run theatres in said cities for the season of 1934-1935 and for seasons subsequent thereto, provisions requiring said persons, firms or corporations operating said second or subsequent run theatres to charge for every feature film that had been exhibited first run in the same city for a night adult admission price of 40¢ or more an admission price after 6 o'clock in the evening of not less than 25¢ for each adult and to refrain from showing any of said feature films so licensed as a part of a double feature program for the same price of admission, they, the exhibitor defendants, would no longer attempt to maintain a night adult admission price of 40¢ or more for the first run exhibition of each feature film licensed thereafter from the distributor defendants, with the purpose and intent by so doing of inducing said distributor de-

fendants to join in and assist said exhibitor defendants in carrying out said unlawful combination, agreement, and conspiracy.

26. That the said exhibitor defendants, pursuant to the plan of said combination, agreement and conspiracy as described in Paragraph Twenty-fifth hereof, did on or about the eleventh day of July, 1934, simultaneously advise the respective representatives of the distributor defendants that unless said restrictions were imposed by said distributor defendants upon persons, firms and corporations seeking licenses from them for exhibition of feature films at second or subsequent run theatres in the cities specifically named in Paragraph Twenty-second hereof, they, the said exhibitor defendants, would no longer attempt to maintain a night adult admission price of 40¢ or more for the first run exhibition of each feature film licensed thereafter from the distributor defendants;

27. That upon receipt of said advices from said exhibitor defendants, the said distributor defendants agreed to join in said unlawful combination, agreement and conspiracy and to impose said restrictions in granting licenses to persons, firms and corporations operating second or subsequent run theatres in said cities, and as a part and in furtherance of said combination, conspiracy and agreement did require all persons, firms and corporations seeking licenses for the exhibition of feature films for the season of 1934-1935 in second or sub-

sequent run theatres located in the cities specifically named in Paragraph Twenty-second hereof, to agree in said licenses to charge for every feature film that had been exhibited first run in the same city for a night adult admission price of 40¢ or more a regular admission price after 6 o'clock in the evening of not less than 25¢ for each adult and not to exhibit any of said feature films as a part of a double feature program for the same price of admission;

28. That said restrictions were imposed by said distributor defendants for the seasons of 1934-1935, 1935-1936, 1936-1937, and, unless restrained by the order of this Court, will be imposed for seasons subsequent thereto; and that most of the persons, firms and corporations so operating second or subsequent run theatres in said cities have been constrained and forced to agree to said restrictions and have in fact accepted licenses containing said restrictions from said distributor defendants with the effects hereinafter described;

29. That the effects of the restrictions as to admission price and double featuring placed upon persons, firms and corporations operating second or subsequent run theatres, as aforesaid, have been (a) to drive out of business some of said persons, firms and corporations so operating second or subsequent run theatres because of the unwillingness or inability of their customers to pay said increased admission price and because said persons, firms and

corporations were no longer able to offer double features, (b) to cause other of said persons, firms and corporations operating the said second or subsequent run theatres to sustain losses or reduced revenue from the operation of their theatres, (c) to interfere with the free exercise of the rights of such persons, firms and corporations operating said second or subsequent run theatres to engage in interstate trade and commerce in motion picture films, (d) to unreasonably restrain trade and commerce in motion picture films, (e) to subject the attending public to the evils incident to the restraint of competition among exhibitors of motion picture films, (f) to strengthen the monopoly of the exhibitor defendants in the operation of first run theatres, and (g) to aid the attempts of the exhibitor defendants to establish a monopoly in the business of operating second or subsequent run theatres in the localities hereinbefore described;

30. That unless perpetually enjoined by the order of this Court the defendants herein will continue to engage in said unlawful combination, conspiracy and agreement with the result that the monopoly and attempted monopoly of the exhibitor defendants will be strengthened and that trade and commerce in motion picture films will be restrained by the requirements as to minimum admission prices and double featuring imposed upon all persons, firms or corporations engaged in or attempting to engage in the business of operating second or subse-

quent run theatres in the cities where the exhibitor defendants now operate.

PRAYER

WHEREFORE, petitioner prays

1. That writs of subpoena issue directed to each and every defendant commanding it or him to appear herein and answer the allegations contained in this amended petition and to abide by and perform such orders and decrees as the Court may make in the premises;

2. That, pending final hearing, the Court issue its preliminary injunction restraining the distributor defendants from enforcing or attempting to enforce the provisions in their respective license agreements with persons, firms and corporations operating second or subsequent run theatres in the cities specifically mentioned in Paragraph Twenty-second hereof restricting said persons, firms and corporations as to the price of admission to be charged by them or as to their respective rights to exhibit two feature films for the same admission price and, further, restraining said distributor defendants from including such restrictive provisions in any new licensing agreements made by them or any of them with any person, firm or corporation operating a second or subsequent run theatre in any one of said cities specifically mentioned in Paragraph Twenty-second hereof;

3. That upon final hearing of this cause, the Court order, adjudge and decree that the acts of

the defendants hereinbefore described constitute a combination, agreement and conspiracy in restraint of trade and commerce in violation of said act of Congress of July 2, 1890, entitled "An Act to Protect Trade and Commerce Against Unlawful Restraints and Monopolies"; and that each of the defendants be perpetually enjoined from further engaging in or carrying out said combination, agreement and conspiracy, or from doing any act in furtherance thereof, or from engaging in any similar combination, agreement or conspiracy having the same general purpose and effect; that the provisions of said licensing agreements between said distributor defendants and said persons, firms and corporations operating second or subsequent run theatres in said cities restricting the price of admission and the right to exhibit double feature programs be adjudged to be unlawful and void, and that the distributor defendants be perpetually enjoined from inserting in any future licensing agreement for the exhibition of feature films with any persons, firms or corporations operating second or subsequent run theatres in the cities specifically mentioned in Paragraph Twenty-second hereof, or in any other cities, wherever located, where the exhibitor defendants may operate theatres, any conditions, provisions or restrictions upon the right of said persons, firms and corporations to charge such admission prices as they see fit or to exhibit more than one feature film for the same price of admission;

4. That the petitioner have such other and further relief as the Court may deem proper.

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