

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,
Plaintiff

v.

VON'S GROCERY COMPANY and
SHOPPING BAG FOOD STORES

Defendants

Civil No. 336-60-WM

Filed: March 25, 1960

COMPLAINT

The United States of America, plaintiff, by its attorneys, acting under the direction of the Attorney General of the United States, brings this Civil Action to obtain equitable relief against the above-named defendants and complains and alleges as follows:

JURISDICTION AND VENUE

1. This complaint is filed and this action instituted against the defendants under Section 15 of the Act of Congress of October 15, 1914, c. 323, 38 Stat. 736, as amended by the Act of December 29, 1950, c. 1184, 64 Stat. 1125, entitled "An Act to supplement existing laws against unlawful restraints and monopolies and for other purposes," commonly known as the Clayton Act, in order to prevent and restrain the violation by the defendants, as hereinafter alleged, of Section 7 of said Act.

2. Both defendants transact business and are found within the Southern District of California.

DEFENDANTS

3. Von's Grocery Company, hereinafter referred to as "Von", is made a defendant herein. Von, a corporation organized and existing under the laws of the State of Delaware, maintains its principal offices in Los Angeles, California.

4. Shopping Bag Food Stores, hereinafter referred to as "Shopping Bag", is made a defendant herein. Shopping Bag, a corporation organized and existing under the laws of the state of California, maintains its principal offices in El Monte, California.

TRADE AND COMMERCE

5. There is a steady stream of commerce involved in the distribution of groceries and related products from producers located throughout the United States to consumers residing in the Los Angeles marketing area. Chains of supermarkets have become important factors in this flow of commerce. Such chains operate purchasing offices which are in contact with suppliers located throughout the United States to purchase and effect the shipment of substantial quantities of groceries and related products from producing facilities located in the various States to the chains' distribution centers and supermarkets in the Los Angeles area. Products shipped to the chains' distribution centers continue in the flow of commerce in trucks owned and operated by the chains to their supermarkets for distribution to the ultimate consumer.

6. In 1958, 20 leading chains of supermarkets operating in the Los Angeles area purchased, distributed and sold groceries and related products having a retail value in excess of \$1.1 billion and accounted for more than 50% of all grocery sales in the area. These chains competed intensively with each other and with other corporations and firms engaged in the purchase, distribution and sale of groceries and related products in the Los Angeles area.

7. Von is one of the leading chains of supermarkets in the Los Angeles area. It was incorporated in Delaware in 1958 and is the successor of incorporated and unincorporated business entities which have been engaged in the purchase, distribution and sale of a complete line of groceries and related products since 1932.

8. In the 1959 fiscal year Von operated 28 complete supermarkets in the Los Angeles area which had total annual sales of more than \$85 million. All of Von's supermarkets are of the self-service, cash-and-carry type. The average annual sales of these supermarkets are in excess of \$3 million per store.

9. Von also owns and operates a modern distribution center in a 216,000 square foot building located on a 20-acre tract of land in the Los Angeles area. This distribution center provides facilities to receive and re-ship groceries and related products to Von's supermarkets throughout the Los Angeles area. Von owns and operates approximately 33 tractors and 39 trailers which it uses for transporting merchandise from the distribution center to its various supermarkets. In the course of its business Von purchases, receives and distributes for re-sale in its supermarkets a substantial volume of groceries and related products which are produced outside the State of California.

10. Shopping Bag is also one of the leading chains of supermarkets in the Los Angeles area. It has operated under its present name since 1947, and is the successor to incorporated and unincorporated business entities which have been engaged in the purchase, distribution and sale of a complete line of groceries and related products in the Los Angeles area since 1933. In the 1959 fiscal year Shopping Bag operated 38 complete supermarkets in the Los Angeles area which had total annual sales of over \$84 million. All of Shopping Bag's supermarkets are of the self-service, cash-and-carry type. The average annual sales of these supermarkets are more than \$2.1 million per store.

11. Shopping Bag also operates a substantial distribution center to receive and re-ship groceries and related products to its supermarkets. To facilitate distribution through its supermarkets of the products received at its distribution center, Shopping Bag owns and operates a fleet of trucks, trailers and automobiles comprising

about 166 units in all. In the course of its business Shopping Bag purchases, receives and distributes for re-sale in its supermarkets a substantial volume of groceries and related products which are produced outside the State of California.

12. In dollar sales Von was the third largest retailer of groceries and related products in the Los Angeles area and Shopping Bag was the fifth largest in 1958. In terms of the total number of markets operated, Shopping Bag was sixth largest and Von was eighth largest. Combined, Von and Shopping Bag, with approximately 8% of total grocery store sales, will be the second largest chain of supermarkets in the Los Angeles area in terms of dollar sales and number of supermarkets.

OFFENSE CHARGED

13. Under a merger agreement between Von and Shopping Bag, dated January 25, 1960, and effective March 28, 1960, all assets and properties of Shopping Bag will be transferred to Von and all outstanding Shopping Bag stock will be converted into Von common stock. This acquisition by Von of Shopping Bag's assets and properties will violate Section 7 of the Clayton Act in that the effect, with respect to the above-described trade and commerce, may be substantially to lessen competition or to tend to create a monopoly, among other ways, as follows:

(a) Actual and potential competition between Von and Shopping Bag in the purchase, distribution and sale of groceries and related products may be eliminated.

(b) Actual and potential competition generally in the purchase, distribution and sale of groceries and related products may be substantially lessened.

(c) Shopping Bag will be eliminated as a substantial independent competitive factor in the purchase, distribution and sale of groceries and related products.

(d) Von's competitive advantages over smaller sellers of groceries and related products may be enhanced to the detriment of actual and potential competition.

(e) Independent retailers of groceries and related products may be deprived of a fair opportunity to compete with the combined resources of Von and Shopping Bag.

(f) The number of competing entities in the Los Angeles area available to producers and wholesalers of groceries and related products will be lessened.

(g) Mergers and acquisition on the part of other chains of supermarkets in the Los Angeles area may be fostered, thus causing a further substantial lessening of competition and tendency toward monopoly in the trade and commerce heretofore described.

(h) Concentration of ownership, management, and control of supermarkets in a few large corporations may be increased.

14. Defendants threaten to carry out the above-described Merger Agreement and plaintiff believes it will be carried out and that it will have continuous unlawful effects unless the relief hereinafter prayed for is granted.

PRAYER

WHEREFORE; plaintiff prays:

1. That the proposed acquisition by Von of the properties and assets of Shopping Bag, described herein, be adjudged a violation of Section 7 of the Clayton Act.

2. That the defendants Von and Shopping Bag, their officers, directors, agents and all other persons acting on their behalf be enjoined from carrying out the Merger Agreement or any similar plan or agreement.

3. That a preliminary injunction issue against defendants preventing and restraining them from taking any action in furtherance of the Merger Agreement or any similar plan or agreement pending final adjudication of the merits of this complaint.

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

5. That plaintiff recover the costs of this suit.

/s/ William P. Rogers

WILLIAM P. ROGERS
Attorney General

/s/ James J. Coyle

JAMES J. COYLE

/s/ Robert A. Bicks

ROBERT A. BICKS
Acting Assistant Attorney General

/s/ Theodore F. Craver

THEODORE F. CRAVER

Attorneys, Department of Justice

/s/ Charles L. Whittinghill

CHARLES L. WHITTINGHILL
Attorney, Department of Justice

/s/ George B. Haddock

GEORGE B. HADDOCK
Attorney, Department of Justice

/s/ Laughlin E. Waters

LAUGHLIN E. WATERS
United States Attorney