

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 v.)
)
 THE LORAIN JOURNAL COMPANY,)
 SAMUEL A. HORVITZ,)
 ISADORE HORVITZ, D. P. SELF,)
 and FRANK MALLOY,)
)
 Defendants.)

Civil No. 26823

Filed: September 22, 1919

C O M P L A I N T

The United States of America, plaintiff, by its attorneys, acting under the direction of the Attorney General of the United States, brings this action against the hereinafter named defendants, and complains and alleges as follows:

I

JURISDICTION AND VENUE

1. This complaint is filed and this action is instituted against the defendants under Section 4 of the Act of Congress of July 2, 1890 (c. 647, 26 Stat. 209, as amended) entitled "An Act to protect trade and commerce against unlawful restraints and monopolies", commonly known as the Sherman Act, in order to prevent and restrain continuing violations by the defendants as hereinafter alleged, of Sections 1 and 2 of said Act.

2. All defendants inhabit, transact business and are found within the Eastern Division of the Northern District of Ohio.

II

DESCRIPTION OF DEFENDANTS

3. The Lorain Journal Company is made a defendant herein. It is a corporation organized and existing under and by virtue of the laws of the State of Ohio. It has offices in the City of Lorain, Lorain County, Ohio, and in the Midland Building in Cleveland, Ohio, and publishes a newspaper known as the Lorain Journal and the Times Herald (hereinafter called the Lorain Journal).

4. Samuel A. Horvitz, an individual residing at 16700 Parkland Drive, Shaker Heights, Ohio, is made a defendant herein. Said defendant is Vice-President, Secretary and a director of The Lorain Journal Company.

5. Isadore Horvitz, an individual residing at 18200 Shaker Boulevard, Shaker Heights, Ohio, is made a defendant herein. Said defendant is President, Treasurer and a director of The Lorain Journal Company.

6. D. P. Self, an individual residing at 1029 12th Street, Lorain, Ohio, is made a defendant herein. Said defendant is Business Manager of the Lorain Journal.

7. Frank Malloy, an individual residing at 630 Pasadena Avenue, Sheff Lake, Lorain, Ohio, is made a defendant herein. Said defendant is Editor of the Lorain Journal.

III

NATURE OF TRADE AND COMMERCE

A. Newspapers and Radio Stations Involved

8. The Lorain Journal is the only newspaper of general daily (excluding Sunday) circulation published in Lorain, Ohio. It is distributed and sold in Lorain, Elyria, and in various other towns in Lorain County. The Lorain Sunday News is the only newspaper of general circulation published every Sunday in Lorain, Ohio and distributed and sold in that city.

9. The Elyria Chronicle-Telegram, published by The Lorain County Printing and Publishing Company (hereinafter called Lorain County P. & P. Co.), is the only newspaper of general daily (excluding Sunday) circulation

published in the afternoon in Elyria, Ohio and distributed and sold in that city and in various other towns in Lorain County but not in the City of Lorain.

10. The radio broadcasting stations having call letters WEOL and WEOL-FM, owned and operated by the Elyria-Lorain Broadcasting Company, broadcast daily over frequencies of 930 kc. and 107.3 mc. respectively. These broadcasting stations operate studios in Elyria and Lorain, Ohio. Their broadcasts are heard regularly by many persons in (a) Lorain County and elsewhere in the State of Ohio, and (b) in other states, including Michigan, Indiana, and Pennsylvania. These stations broadcast news, advertising and entertainment to listeners located in said states.

11. The Lorain Journal, the Lorain Sunday News, and radio broadcasting stations WEOL and WEOL-FM are the only significant sources of local news, advertising and other information disseminated regularly for residents of Lorain, Ohio.

B. News and Advertising

12. A substantial amount of news and other information is gathered from all parts of the United States and other countries, and is distributed and delivered by various means in interstate and foreign commerce to publishers of newspapers and operators of radio broadcasting stations in Lorain, Ohio, and Elyria, Ohio. Newspapers and radio broadcasting stations distribute and disseminate this news to persons in Lorain, Elyria and the vicinity, and also to persons outside the State of Ohio.

13. Advertising at compensatory rates is essential to the operation both of newspapers and of radio broadcasting stations at Lorain, Ohio and Elyria, Ohio. Such newspapers and radio stations, in arranging for advertisements, cause a continuous flow in interstate commerce of substantial amounts of advertising copy, contracts, and checks between the advertisers and the newspaper publishers or radio station operators. Newspaper and radio stations at Lorain and Elyria distribute and

disseminate such advertising to persons in Elyria, Lorain and vicinity and also to persons outside the State of Ohio.

C. Supplies

14. Substantial amounts of newsprint paper and ink are manufactured at various places in the United States and Canada and are shipped in interstate commerce to newspaper publishers at Lorain, Ohio and Elyria, Ohio for use in publishing these newspapers. In addition, substantial amounts of advertising mats, type, cuts and other supplies are shipped in interstate commerce from advertisers located outside the State of Ohio to newspaper publishers at Lorain and Elyria to be used in publishing newspaper advertisements.

15. Records of musical and other transcriptions are manufactured outside the State of Ohio and are shipped in interstate commerce to operators of radio stations at Lorain and Elyria to be played during broadcast programs.

D. Nationally Advertised Products

16. Newspaper and radio advertising is essential in developing, maintaining, and extending a market for the sale of goods and services. A large variety and substantial amounts of goods and services produced and distributed by persons located in the various states of the United States, other than Ohio, are advertised and offered for sale in Ohio by means of advertisements published in newspapers in Lorain and Elyria, or broadcast over radio stations at Lorain and Elyria. Sales of such products and services are made in interstate commerce to purchasers in Lorain, Elyria and vicinity as a result of advertisements published in Lorain and Elyria newspapers or broadcast by Lorain and Elyria radio stations.

IV

OFFENSES CHARGED

17. Commencing some years ago (the exact date being presently unknown to the plaintiff), and continuously thereafter to the date of

the filing of this complaint, the defendants and others to the plaintiff unknown, have been engaged in a combination and conspiracy in restraint of the above described interstate trade and commerce in news and advertising, supplies, and nationally advertised products in violation of Section 1 of the Sherman Act. Commencing some years ago (the exact date being presently unknown to the plaintiff), and continuously thereafter to the date of the filing of this complaint, the defendants and others to the plaintiff unknown, have been engaged in a combination and conspiracy to monopolize and in an attempt to monopolize the above-described interstate trade and commerce in the dissemination of news, advertising and other information in violation of Section 2 of the Sherman Act. The defendants have threatened to and will continue said offenses unless the relief hereinafter prayed for in this complaint is granted.

18. The aforesaid combinations and conspiracies and attempt to monopolize have consisted of a continuing concert of action among the defendants and others to the plaintiff unknown, the substantial terms of which have been, from time to time, that the defendants:

(a) Undertake to acquire ownership of newspapers and radio broadcasting facilities in Lorain County, Ohio, which compete with defendant The Lorain Journal Company;

(b) Threaten to refuse and refuse to publish in the Lorain Journal advertisements by those persons, firms and corporations who advertise or propose to advertise over the radio broadcasting facilities of the Elyria-Lorain Broadcasting Company;

(c) Threaten to refuse and refuse to publish in the Lorain Journal advertisements by those persons, firms and corporations who advertise or propose to advertise in the Lorain Sunday News;

(d) Attempt to persuade and persuade employees of the Lorain Sunday News and the Elyria-Lorain Broadcasting Company to leave their respective employments;

(e) Agree with Lorain County P. & P. Co. that it will not circulate copies of the Elyria Chronicle-Telegram within the City of Lorain, Ohio; and

(f) Agree with Lorain County P. & P. Co. that it will not solicit or accept advertisements from merchants advertising for the sale of goods or services in the City of Lorain, Ohio.

19. Pursuant to said combinations and conspiracies and attempt to monopolize the defendants have done the things they agreed to do and, among other things, have:

(a) Attempted to purchase the Elyria Chronicle-Telegram and the Elyria-Lorain Broadcasting Company;

(b) Cancelled the advertising contracts with the Lorain Journal of the following persons, firms and corporations because they advertised over the radio broadcasting facilities of the Elyria-Lorain Broadcasting Company on the approximate dates indicated:

Mrs. Ruth Stevens The Coliseum Lorain, Ohio	October 25, 1948
Dan D'Andrea D'Andrea House of Music Lorain, Ohio	October 25, 1948
Sol Dinn Dinn's Department Store Lorain, Ohio	November 10, 1948
Eldred Stationers Lorain, Ohio	Fall of 1948
Leo Falencki Falencki Hardware Lorain, Ohio	Fall of 1948
Dominic Richi Richi's Tavern Amherst, Ohio	February 15, 1949
Donald A. Heisner Heisner Radio Shop Lorain, Ohio	December 9, 1948

Henry Kohlmyer Kohlmyer Hardware Lorain, Ohio	November, 1948
Joseph W. Brochu Kool-Vent Awning Co. Lorain, Ohio	February 3, 1949
Robert Tebbel The Kroger Company Cleveland, Ohio	December 27, 1948
G. W. Marshall Marshall's Auto Service Lorain, Ohio	November 2, 1948
W. C. McConnell W. C. McConnell, Inc. Lorain, Ohio	October 25, 1948
H. H. Holbrook Maytag Lorain Co. Lorain, Ohio	October 25, 1948
H. D. Murphy Lake Erie Oil Co. Lorain, Ohio	October 27, 1948
Nat Rosenbaum Nat's Natty Shop Lorain, Ohio	December, 1948
Roy Wissman Wissman Jewelers Lorain, Ohio	November, 1948
Leonard F. Oldfield Electric Sewer Cleaning Co. Amherst, Ohio	November, 1948

(c) Refused to accept advertisements of the following persons, firms and corporations while they advertised over the radio broadcasting facilities of the Elyria-Lorain Broadcasting Company on the approximate dates indicated:

Cornelius A. Hageman Hageman Supply Co. Lorain, Ohio	Fall of 1948
Harold Pyle Central Bank Lorain, Ohio	Late October, 1948
Ricci Tailors Lorain, Ohio	December, 1948
Mrs. Margaret Ware Dr. Pepper Bottling Co. Elyria, Ohio	March, 1949

(d) Notified the persons, firms and corporations listed below that the Lorain Journal would not accept advertisements from those advertisers who advertise over the radio broadcasting facilities of the Elyria-Lorain Broadcasting Company:

Fred C. Williams
Atkinson & Williams
Lorain, Ohio

Robert Tebbel
The Kroger Company
Cleveland, Ohio

Mrs. Ruth Stevens
The Coliseum
Lorain, Ohio

Leonard F. Oldfield
Electric Sewer Cleaning Co.
Amherst, Ohio

Sol Dinn
Dinn's Department Store
Lorain, Ohio

Joseph Lepon
Lee Furniture
Lorain, Ohio

Paul Driscoll
Driscoll Music Store
Lorain, Ohio

George G. Llewellyn
Llewellyn Motor Co.
Lorain, Ohio

Leo Falencki
Falencki Hardware
Lorain, Ohio

Morris Mayer
Mayer's Hardware
Lorain, Ohio

S. C. Miller
B. F. Goodrich Co.
Lorain, Ohio

W. C. McConnell
W. C. McConnell, Inc.
Lorain, Ohio

Paul M. Grubb
Avon Lakes Theatre
Avon Lakes, Ohio

E. D. Murphy
Lake Erie Oil Co.
Lorain, Ohio

Cornelius A. Hageman
Hageman Supply Co.
Lorain, Ohio

Nat Rosenbaum
Nat's Natty Shop
Lorain, Ohio

August Ilg
Ohio Theater
Lorain, Ohio

Roy Wissman
Wissman Jewelers
Lorain, Ohio

Henry Kohlmyer
Kohlmyer Hardware
Lorain, Ohio

James A. Resar
519 Lodi Street
Elyria, Ohio

Joseph W. Brochu
Kool-Vent Awning Co.
Lorain, Ohio

(e) Refused to renew the advertising contract of Sears, Roebuck and Co. in 1943 with the Lorain Journal because that company advertised in the Lorain Sunday News.

(f) Attempted to dissuade the following persons, firms and corporations from advertising in the Lorain Sunday News:

Lee Richards
Ohio Fuel Gas Co.
Lorain, Ohio

Leo Murray
J. C. Penney Co.
Lorain, Ohio

Stone's Grill
Lorain, Ohio

Fred C. Williams
Atkinson & Williams
Lorain, Ohio

Simon Gary
Gary Motor Sales, Inc.
Lorain, Ohio

(g) Exerted pressure upon the following persons, firms and corporations to cancel their advertising contracts with Lorain Sunday

News:

August Ilg
Ohio Theater
Lorain, Ohio

Sears, Roebuck and Co.
Lorain, Ohio

Roy Wissman
Wissman Jewelers
Lorain, Ohio

Smith & Gerhardt
Lorain, Ohio

Palace Theatre
Lorain, Ohio

Tivoli Theater
Lorain, Ohio

(h) Attempted to persuade employees of the Lorain Sunday News and the Elyria-Lorain Broadcasting Company to leave their respective employments;

(i) Made an agreement with Lorain County P. & P. Co. pursuant to which said company has refrained from circulating copies of the Elyria Chronicle-Telegram within the City of Lorain, Ohio; and

(j) Made an agreement with Lorain County P. & P. Co. pursuant to which said company has not solicited or accepted for publication in the Elyria Chronicle-Telegram advertisements for the sale of goods or services in the City of Lorain, Ohio.

V

EFFECTS

20. The effects of the aforementioned combinations and conspiracies, and attempt to monopolize, among others, have been and are:

(a) To restrain the aforesaid trade and commerce among the several states in news and advertising, supplies and nationally advertised products;

(b) To monopolize the aforesaid trade and commerce among the several states in the dissemination of news, advertising and other information;

(c) To compel advertisers in the Lorain Journal to refrain from advertising over the broadcasting facilities of the Elyria-Lorain Broadcasting Company and in the Lorain Sunday News:

(d) To deprive advertisers over the broadcasting facilities of the Elyria-Lorain Broadcasting Company of the opportunity to advertise in the Lorain Journal;

(e) To irreparably injure competitors of the Lorain Journal in the operations of their businesses as a result of their inability to obtain advertising contracts from those persons, firms, and corporations who advertise in the Lorain Journal; and

(f) To deny various persons, firms and corporations free access to channels of advertising in Elyria and Lorain, Ohio, with consequent irreparable injury to their operations.

RELIEF SOUGHT

WHEREFORE, plaintiff prays:

1. That a preliminary injunction issue, pending final adjudication of the merits of this complaint, enjoining the defendants from refusing to publish in the Lorain Journal at its current advertising rates and under its customary terms and conditions, the advertisements of any person, firm or corporation who offers to pay in advance for such advertisements and who advertises on the facilities of the Elyria-Lorain Broadcasting Company or in the Lorain Sunday News, or both; provided that nothing in said injunction shall prohibit the defendants from refusing to publish any advertisement, the publication of which would constitute a violation of any law of the State of Ohio or of the United States;

2. That the Court adjudge and decree that the defendants have combined and conspired to restrain and to monopolize and have attempted to monopolize interstate trade and commerce in violation of Sections 1 and 2 of the Sherman Act;

3. That each of the defendants be enjoined from acquiring ownership or control of the capital stock or assets of any competing publication or radio broadcasting facilities;

4. That each of the defendants, and all persons, firms and corporations acting in his or its behalf or under his or its direction or control, be enjoined from declining to accept at non-discriminatory terms and conditions the advertisements of any advertiser on the ground, in whole or in part, expressed or implied, that said advertiser also uses the advertising facilities of any other person, firm or corporation;

5. That each of the defendants be enjoined from being a party to any agreements or understandings under the terms of which any party to said agreements or understandings refrains from circulating a newspaper in any area;

6. That each of the defendants be enjoined from being a party to any agreements or understandings under the terms of which any party to said agreements or understandings refrains from soliciting or accepting advertising of persons, firms and corporations located in the area served by any other party to said agreements or understandings;

7. That the plaintiff have such other, further and different relief as the case may require and the Court may deem just and proper in the premises;

8. That the plaintiff recover its taxable costs.

Dated: September 22, 1949.

/s/ J. Howard McGrath
J. HOWARD MCCGRATH
Attorney General

/s/ Herbert A. Bergson
HERBERT A. BERGSON
Assistant Attorney General

/s/ Don C. Miller
DON C. MILLER
United States Attorney

/s/ Victor H. Kramer
VICTOR H. KRAMER
Trial Attorney

/s/ Baddia J. Rashid
BADDIA J. RASHID

/s/ Norman H. Seidler
NORMAN H. SEIDLER

/s/ Frank J. Oberg
FRANK J. OBERG

/s/ Eugene C. Peck II
EUGENE C. PECK II

CITY OF WASHINGTON)
)
DISTRICT OF COLUMBIA) ss

BADDIA J. RASHID, being first duly sworn, says that he is an attorney employed by the Department of Justice of the United States; that he has read the foregoing complaint and knows the contents and is familiar with the subject matter thereof; that the allegations of fact therein are based upon an investigation which he was directed to conduct by his superiors in the Department of Justice; and that the allegations of fact therein are based on the information obtained through such investigation and are true to the best of his information and belief.

_____/s/ Baddia J. Rashid
 BADDIA J. RASHID

Subscribed and sworn to before me
this 16th day of Sept. 1949.

_____/s/ Walter W. Dosh
 Notary Public, D. C.

My Commission Expires 12/15/50.