

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF LOUISIANA
NEW ORLEANS DIVISION

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
v.)
)
THE TIMES-PICAYUNE PUBLISHING)
COMPANY, L. K. NICHOLSON, JOHN)
S. TIMS, JR., AUBREY F. MURRAY,)
and DONALD W. COLEMAN,)
)
Defendants.)

Civil No. 2797
Filed: June 14, 1950

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 that Act.

2. All defendants inhabit, transact business and are found within the New Orleans Division of the Eastern District of Louisiana.

II.

DESCRIPTION OF DEFENDANTS

3. The Times-Picayune Publishing Company is made a defendant herein. It is a corporation organized and existing under and by virtue of the laws of the State of Louisiana. It has offices in the City of New Orleans, Orleans Parish, Louisiana, and publishes a morning daily newspaper known as The Times-Picayune, hereinafter referred to as "Times-Picayune", an evening daily newspaper known as The New Orleans States, hereinafter referred to as the "States", and a Sunday newspaper known as The Times-Picayune and New Orleans States, hereinafter referred to as the "Times-Picayune & States".

4. L. K. Nicholson, an individual residing in New Orleans, Louisiana, is made a defendant herein. He is President of the Times-Picayune Publishing Company.

5. John F. Tims, Jr., an individual residing in New Orleans, Louisiana, is made a defendant herein. He is Vice-President and Business Manager of the Times-Picayune Publishing Company.

6. Aubrey F. Murray, an individual residing in New Orleans, Louisiana, is made a defendant herein. He is Advertising Director of the Times-Picayune Publishing Company.

7. Donald W. Coleman, an individual residing in New Orleans, Louisiana, is made a defendant herein. He is Circulation Manager of the Times-Picayune Publishing Company.

III.

NATURE OF TRADE AND COMMERCE

A. Newspapers Involved.

8. The Times-Picayune is the only morning newspaper of general daily (excluding Sunday) circulation published in New Orleans, Louisiana. It is distributed and sold in New Orleans, elsewhere in the State of Louisiana, and in various other states of the United States. The Times-

Picayune Publishing Company has published in New Orleans, Louisiana, continuously since prior to 1933, a Sunday newspaper which is in general circulation in New Orleans, elsewhere in the State of Louisiana, and in other states of the United States. During the period from approximately 1941 to approximately March 1950, the Times-Picayune Publishing Company published, distributed, and sold the only Sunday newspaper published in New Orleans, Louisiana.

9. The States was formerly published as an evening and Sunday newspaper by Daily States Publishing Company, Ltd. In approximately July 1933, the Times-Picayune Publishing Company purchased from the Daily States Publishing Company, Ltd., the name, good will, circulation and certain other rights and assets of the newspaper known as The New Orleans States. Since said purchase in 1933 the Times-Picayune Publishing Company has published in New Orleans, Louisiana, the States as an evening newspaper of general circulation in New Orleans, elsewhere in the State of Louisiana, and in other states of the United States. During the period from its purchase in 1933 by the Times-Picayune Publishing Company to the present time, there has not been a Sunday edition of the States published separately from the Sunday edition of the Times-Picayune; since 1933 the only Sunday newspaper published by the Times-Picayune Publishing Company has been the Times-Picayune & States.

10. The New Orleans Item, hereinafter referred to as the "Item", is a daily evening and Sunday newspaper of general circulation which competes with the newspapers published by the defendant the Times-Picayune Publishing Company. The Item is published in New Orleans, Louisiana, by The Item Company, and distributed and sold in that City, elsewhere in the State of Louisiana, and in other states of the United States. Prior to approximately 1941 the Item was published as a daily evening newspaper and as a Sunday newspaper. From approximately 1941 to approximately March 1950, the publication of a Sunday newspaper by the Item was discontinued. In 1949, The Item Company succeeded to The

Item Company, Inc., which had theretofore published the Item. In approximately March 1950, The Item Company began publication of a Sunday newspaper in New Orleans, Louisiana, which has general circulation in New Orleans, elsewhere in the State of Louisiana, and in other states of the United States.

11. The newspapers hereinabove named are the only significant media of news, advertising and other information disseminated regularly for residents of New Orleans, Louisiana, through the publication and circulation of newspapers.

B. Circulation of Newspapers Involved.

12. In the year 1949 the daily average net paid circulation for each of the newspapers of general circulation in New Orleans was approximately as follows: Times-Picayune, 174,819; States, 95,298; Item, 97,112; Times-Picayune & States, 283,540. Of these totals the daily average net circulation of each of the named newspapers distributed and sold in states other than the State of Louisiana and in foreign countries in the year 1949 was approximately as follows: Times-Picayune, 17,515; Times-Picayune & States, 11,303; States, 4,826; Item, 4,808.

C. News and Advertising.

13. 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 the publishers of the Times-Picayune, the States, the Item and the Times-Picayune & States in New Orleans, Louisiana. These newspapers distribute and disseminate this news to persons in New Orleans, Louisiana, elsewhere in the State of Louisiana, and also to persons outside the State of Louisiana by truck, airplane, railroads and the United States Mail.

14. Advertising at compensatory rates is essential to the operation of the Times-Picayune, the States, the Item and the Times-Picayune & States. Approximately 98 per cent of the total operating revenue of these newspapers is derived from circulation and advertising. Advertising in these newspapers is commonly divided into three principal classifications, namely, classified, local display and general, and is hereinafter referred to by those classes.

15. The Times-Picayune, the States, the Item and the Times-Picayune & States, in arranging for advertisements, cause a continuous flow in interstate commerce of substantial amounts of advertising copy, mats, cuts, contracts and checks between the advertisers and the newspaper publishers. These newspapers distribute and disseminate such advertising to persons in New Orleans and elsewhere in the State of Louisiana, and also to persons outside the State of Louisiana.

D. Supplies.

16. Substantial amounts of newsprint paper, ink and other materials are manufactured in various places in the United States, and foreign countries, and are shipped in interstate commerce to the Times-Picayune, the States, the Item, and the Times-Picayune & States for use in their publication.

E. Nationally Advertised Products.

17. Newspaper 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 Louisiana, are advertised and offered for sale in Louisiana by means of advertisements published in the Times-Picayune, the States, the Item, and the Times-Picayune & States. Sales of such products and services are made in interstate commerce to purchasers in

New Orleans, Louisiana, and vicinity as a result of advertisements published in these newspapers. Sales of other such products and services are made in interstate commerce to purchasers in states other than the State of Louisiana as a result of advertisements in these newspapers by advertisers located in New Orleans, Louisiana.

IV.

OFFENSES CHARGED

18. Since 1935 defendant the Times-Picayune Publishing Company has entered into and is now a party to a series of contracts with its advertisers in unreasonable restraint of the above-described interstate trade and commerce in newspapers, in the dissemination of news and advertising, in supplies, and in nationally advertised products in violation of Section 1 of the Sherman Act.

19. Commencing approximately in the year 1933 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 unreasonable restraint of the above-described interstate trade and commerce in newspapers, in the dissemination of news and advertising, in supplies, and in nationally advertised products, in violation of Section 1 of the Sherman Act.

20. Commencing approximately in the year 1933, 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 the above-described interstate trade and commerce in newspapers and in the dissemination of news and advertising in violation of Section 2 of the Sherman Act.

21. Commencing approximately in the year 1933, and continuously thereafter to the date of the filing of this complaint, the defendants have been engaged in an attempt to monopolize the above-described interstate trade and commerce in newspapers and in the dissemination

of news and advertising in violation of Section 2 of the Sherman Act.

22. The defendants threaten to and will continue said offenses unless the relief hereinafter prayed for in this complaint is granted.

23. Pursuant to the aforesaid combinations and conspiracies to restrain and to monopolize, and in an attempt to monopolize the aforesaid trade and commerce, the defendants, among other things:

- (a) In 1933 caused the defendant the Times-Picayune Publishing Company to acquire a newspaper in New Orleans, Louisiana, which competed with said defendant, under restrictive covenants in order to prevent competition;
- (b) In or about 1941 caused the defendant the Times-Picayune Publishing Company to enter into an agreement with a competitor under the terms of which the competitor agreed to discontinue publishing a Sunday newspaper in the City of New Orleans, Louisiana;
- (c) Since in or about 1935 required advertisers using classified advertisements to contract to purchase and to purchase such advertisements in the Times-Picayune and States as a unit at combination rates and refused to sell such advertising in the morning or evening newspapers as a separate publication;
- (d) Since in or about 1935 induced advertisers to advertise in the States by providing in connection with contracts for local display advertising that any advertiser contracting for linage in the Times-Picayune and the Times-Picayune & States will be billed for any advertising in the States during the contract period at the States' rate but based upon

the lineage contracted for in the Times-Picayune or the Times-Picayune & States; however, the lineage carried in the States will not be credited to the total lineage contracted for in the Times-Picayune or the Times-Picayune & States;

- (e) From in or about January 1944 until February, 1950, required advertisers, in order to obtain a reduced rate on general advertising in excess of 10,000 lines, to contract to purchase and to purchase such advertisements in excess of 10,000 lines in a combination of the Times-Picayune and States or in a combination of the Times-Picayune and the Times-Picayune & States;
- (f) Since February 1950 required advertisers to contract to purchase and to purchase general advertising in the Times-Picayune and States as a unit at combination rates and refused to sell such advertising in the morning or evening newspapers as a separate publication;
- (g) Since in or about June 1949 coerced and otherwise induced newspaper vendors in New Orleans, Louisiana, to discontinue and refrain from the sale and distribution of newspapers published by The Item Company by refusing to permit said vendors to sell newspapers published by defendant the Times-Picayune Publishing Company unless such vendors discontinued or refused to sell and deliver newspapers published by The Item Company and by other means;
- (h) Used the dominant advantage in New Orleans, Louisiana, of the Times-Picayune to injure and destroy the competition of a Sunday newspaper and an evening newspaper with the Times-Picayune & States and the States, respectively;

- (1) By doing the things alleged in subparagraphs (a) to (g) of this paragraph;
- (2) By using the income from the Times-Picayune to offset the losses or reductions in profits of the States incident to arbitrarily low rates for advertising carried in the States; and
- (3) By increasing the pages of the States at increased cost of publication without correspondingly increased revenue for the purpose of inducing and forcing circulation and advertising from the Item to the States, and using income from the publication of the Times-Picayune to offset the losses or reductions in profits of the States incident thereto.

24. The illegal conduct alleged in paragraph 18 of this complaint consisted of defendant the Times-Picayune Publishing Company entering into those contracts with its advertisers described in subparagraphs (c), (d), (e) and (f) of paragraph 23.

V.

EFFECTS

25. The aforesaid offenses have had the following effects, among others:

- (a) To restrain the aforesaid trade and commerce among the several states in newspapers published in New Orleans, Louisiana, and in the dissemination of news and advertising, in supplies, and in nationally advertised products;
- (b) To monopolize the aforesaid trade and commerce among the several states in newspapers published in New Orleans, Louisiana, and in the dissemination of news and advertising;
- (c) To compel advertisers in the Times-Picayune to refrain from advertising in newspapers published by The Item Company;
- (d) To deprive advertisers in the Times-Picayune of the opportunity to freely select other newspapers in

which to advertise;

- (e) To exclude newspapers competing with newspapers published by the Times-Picayune Publishing Company from a substantial part of the trade and commerce among the several states in the advertising hereinbefore described;
- (f) To irreparably injure competitors of the Times-Picayune Publishing Company in the operation of their businesses as a result of their inability to freely compete for and obtain advertising contracts from those persons who advertise in the Times-Picayune; and
- (g) To deny to advertisers free access to channels of advertising in New Orleans, Louisiana.

P R A Y E R

WHEREFORE, plaintiff prays:

1. 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.

2. That the Court adjudge and decree that the defendant the Times-Picayune Publishing Company has contracted in restraint of interstate trade and commerce in violation of Section 1 of the Sherman Act.

3. That the Court grant such relief as it deems appropriate and necessary to prevent the defendants, jointly and severally, from continuing to violate Sections 1 and 2 of the Sherman Act, and to dissipate the effects and to prevent a recurrence of their unlawful conduct.

4. That the plaintiff recover its taxable costs.

Dated: _____

/s/ J. Howard McGrath
J. HOWARD McGRATH
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/s/ Herbert A. Bergson
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/s/ John N. McKay
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