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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,)	
Plaintiff)	Civil Action No. 79-1549
v.)	Filed: June 14, 1979
NATIONAL ASSOCIATION OF)	<u>FOR INJUNCTIVE RELIEF</u>
BROADCASTERS)	
Defendant.)	

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 defendant and complains and alleges as follows:

I.

JURISDICTION AND VENUE

1. This complaint is filed under Section 4 of the Sherman Act (15 U.S.C. §4), in order to prevent and restrain the continuing violation by the defendant, as hereinafter alleged, of Section 1 of said Act (15 U.S.C. §1).

2. The defendant maintains an office, transacts business and is found within the District of Columbia.

II.

THE DEFENDANT

3. The National Association of Broadcasters (hereinafter referred to as "NAB") is named the defendant herein. The NAB is a trade association incorporated under the laws of Delaware and having its principal place of business in the District of Columbia. The NAB's membership consists primarily of persons and firms engaged in commercial television and radio broadcasting.

III.

CO-CONSPIRATORS

4. Various persons and organizations, not made defendants herein, including members of the defendant, participated as co-conspirators in the violation herein alleged and performed acts and made statements in furtherance thereof.

IV.

DEFINITIONS

5. As used herein, the term

(a) "advertising" means the broadcast on television of commercial and political messages in exchange for the payment of a fee;

(b) "announcements" means the broadcast on television of promotional, public service and other similar messages for which no fee is charged;

(c) "NAB Code" means the Television Code of the NAB adopted, amended and distributed by the NAB;
and

(d) "overcommercialization rules" means those portions of the NAB Code which govern the quantity and format of commercial television advertising and announcements.

V.

TRADE AND COMMERCE

6. The NAB's television membership includes approximately 468 commercial television broadcast stations which represent at least 70% of all commercial television stations in the United States. These television stations broadcast advertising messages for a fee, usually computed with reference to the amount of time devoted to broadcasting the message. In addition, these stations broadcast announcements for which they charge no fee. In 1977, commercial television stations received revenues in excess of \$3.6 billion from sales of time to advertisers.

7. The NAB commercial television network members enter into contracts with television broadcasters. Pursuant to these contracts the network members deliver programming to television broadcasters for use during agreed-upon hours of the day and pay the broadcasters for broadcasting the programming. The programming that network members deliver to broadcasters includes advertising and announcements which the broadcasters are contractually bound to broadcast along with the programming. Broadcasters throughout the United States, including many NAB member stations, have entered into such contracts with NAB member networks. The network programming, including advertising and announcements, is broadcast by these stations throughout the United States. Network members charge advertisers a fee for including their advertisements in the

programming the network members deliver to the television broadcasters with whom they have contracts. In 1977, commercial television networks received advertising revenues in excess of \$3.2 billion.

8. Since 1952 the NAB has continuously promulgated and revised the NAB Code. The NAB Code sets industry-wide standards for television programming and advertising. Although subscription to the NAB Code is not mandatory, approximately 77 percent of all stations in the top fifty television markets are NAB Code subscribers. These markets reach approximately 70 percent of all households in the United States owning television sets. Furthermore, over 93 percent of network affiliates in the top fifty markets subscribe to the NAB Code. The NAB Code rules are interpreted, monitored and enforced by the Code Authority Director, who is appointed by the President of the NAB. The NAB Code provides for suspension and expulsion of subscribers for television programming in violation of any of the provisions of the NAB Code as determined by the NAB Television Code Review Board whose members are subscribers to the Code and are appointed to the Board by the President of the NAB. Appeals of the NAB Television Code Review Board decisions may be taken to the NAB Television Board of Directors, whose members are elected from the NAB membership-at-large.

9. Section XIV of the NAB Code, "Time Standards for Non-Program Material," sets forth rules governing overcommercialization. The overcommercialization rules pervasively regulate both the amount and format of permissible advertising and announcements on television by placing restrictions on non-program material. These restrictions limit the amount of time

during specified time periods which may be devoted to non-program material, the number of interruptions by non-program material within those periods, and the number of consecutive non-program messages which can be made during any interruption. These restrictions vary according to a number of factors including network affiliation, type of programming and time of broadcast.

10. NAB station and network members sell broadcast time for advertising and announcements to individuals, corporations and other legal entities in states other than the one in which the member maintains its principal place of business. Such broadcast time is sold and such advertising and announcements are broadcast in a manner consistent with the overcommercialization rules of the NAB Code.

11. The activities of the defendant and the co-conspirators, as described herein, are within the flow of interstate commerce and have a substantial effect upon interstate commerce.

VI.

VIOLATIONS ALLEGED

12. Beginning at least as early as 1952 and continuing up to and including the date of the filing of this complaint, the defendant and co-conspirators have been engaged in a combination and conspiracy in unreasonable restraint of the aforesaid trade and commerce in violation of Section 1 of the Sherman Act. Said unlawful combination and conspiracy is continuing and will continue unless the relief hereinafter prayed for is granted.

13. The aforesaid combination and conspiracy has consisted of a continuing agreement, understanding, and concert of action among the defendant and co-conspirators, the substantial terms of which have been and are:

(a) to adopt, publish and distribute over-commercialization rules of the NAB Code;

(b) to adhere to the overcommercialization rules of the NAB Code;

(c) to detect violations of and enforce the provisions of the overcommercialization rules of the NAB Code; and

(d) to limit and restrict the quantity of advertising time and the format and number of advertisements and announcements.

14. For the purpose of effectuating the aforesaid combination and conspiracy, the defendant and the NAB co-conspirators have done those things which, as hereinbefore alleged, they agreed to do.

VII.

EFFECTS

15. The aforesaid combination and conspiracy has had the following effects, among others.

(a) The quantity of broadcasting time available for advertising and announcements has been artificially curtailed and restricted and the number and format of advertisements and announcements that may be broadcast has been artificially curtailed and restricted.

(b) Price competition in television advertising has been restrained and suppressed;

(c) Competition among television broadcasters as to the quantity of advertising time and the format and number of advertisements and announcements has been restrained and suppressed; and

(d) Purchasers of television advertising time have been deprived of the benefits of free and open competition among television broadcasters.

VII.

PRAYER

WHEREFORE, PLAINTIFF PRAYS:

1. That the Court adjudge and decree that the defendant has engaged in an unlawful combination and conspiracy in restraint of the aforesaid trade and commerce in violation of Section 1 of the Sherman Act.

2. That the defendant, its officers, agents, employees, members and all other persons acting or claiming to act on its behalf be enjoined and restrained from continuing, maintaining or renewing the aforesaid combination and conspiracy, and from entering into, maintaining, or participating in any agreement, understanding, plan, program or other arrangement having the purpose or effect of continuing, maintaining or renewing such combination and conspiracy or of otherwise achieving the same effects.

3. That the defendant be required to cancel those provisions of the NAB Code and every other rule, opinion, resolution, or statement of policy which have the purpose or effect of suppressing or restricting the amount or format of television advertising and announcements.

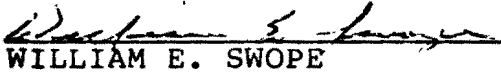
4. That the plaintiff have such other and further relief as the nature of the case may require and the Court may deem just and proper under the circumstances.

5. That the plaintiff recover the costs of this
suit.

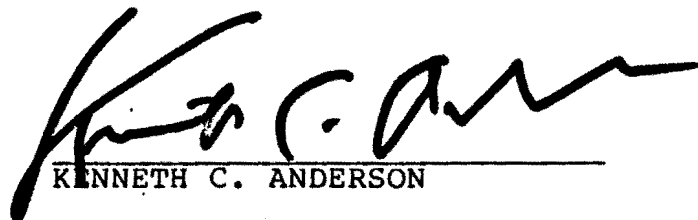

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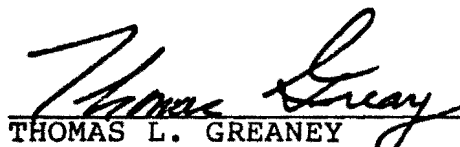
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