

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. Greater Buffalo Press, Inc. (The Hearst Corp.); Newspaper Enterprise Assn., Inc.; The International Color Printing Co.; Southwest Color Printing Corp.; and Dixie Color Printing Corp., U.S. District Court, W.D. New York, 1965 Trade Cases ¶71,479, (Aug. 31, 1965)

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United States v. Greater Buffalo Press, Inc. (The Hearst Corp.); Newspaper Enterprise Assn., Inc.; The International Color Printing Co.; Southwest Color Printing Corp.; and Dixie Color Printing Corp.

1965 Trade Cases ¶71,479. U.S. District Court, W.D. New York. Civil Action No. 9004. Entered August 31, 1965. Case No. 1582 in the Antitrust Division of the Department of Justice.

Sherman Act

Tying Arrangements—Newspaper Comics—Consent Judgment.—A newspaper publisher was prohibited by a consent judgment from entering into any contract with persons selling color comic, supplements which would restrict the business of printing or selling color comic supplements, allocate markets or customers, or fix the terms for sale to third persons. The judgment also prohibited entering into a license agreement which would restrict the licensee's choice of printers to one designated by the publisher.

For the plaintiff; William Orrick, Assistant Attorney General, Lewis Bernstein, William D. Kilgore, Jr., John T. Curtin and Elliott H. Feldman, Attorneys, Department of Justice.

For the defendants: Herbert Brownell and Jesse Climenko for the Hearst Corp.

Final Judgment

[Final judgment:] Plaintiff, United States of America, having filed its complaint herein on January 6, 1961, the defendant, The Hearst Corporation, having appeared and filed its answer to the complaint denying the substantive allegations thereof, and the plaintiff and said defendant, by their respective attorneys, having consented to the entry of this Final Judgment before the taking of any testimony and without trial or adjudication of any issue of fact or law herein, and without any admission by or estoppel of either party as to any such issue; and this Court having determined that there is no just reason, for delay in entering a Final Judgment, except as otherwise provided herein, as to all of plaintiff's claims asserted in said complaint against the said defendant; it is hereby

Ordered, adjudged and decreed as follows:

I

This Court has jurisdiction of the subject matter of this action and of the parties consenting hereto. The complaint states claims for relief against the consenting defendant under Sections 1 and 2 of the Act of Congress of July 2, 1890, entitled "An act to protect trade and commerce against unlawful restraints and monopolies," as amended, commonly known as the Sherman Act, and under Section 3 of the Act of Congress entitled "An act to supplement existing laws against unlawful restraints and monopolies and for other purposes," approved October 15, 1914, as amended, commonly known as the Clayton Act.

II

As used in this Final Judgment:

(A) "Hearst" shall mean the defendant The Hearst Corporation with its principal place of business at New York City, New York, and as used herein shall include King;

(B) "King" shall mean the King Features Syndicate Division of Hearst, with its principal place of business at New York City, New York;

(C) "Consenting defendant" shall mean the defendant Hearst;

(D) "Person" shall mean any individual, partnership, firm, corporation, association, trustee or other business or legal entity;

(E) "Color comic supplements" shall mean supplements for inclusion in Sunday or Saturday newspapers, printed in color, and usually containing, among other things, copyrighted comic features; and

(F) "Features" shall mean material, whether copyrighted or not, including but not limited to comic strips, which appear in newspaper color supplements.

III

(A) The provisions of this Final Judgment applicable to the consenting defendant shall apply also to its officers, directors, servants, employees, agents, successors and assigns, and to all other persons in active concert or participation with such defendant who shall have received actual notice of this Final Judgment by personal service or otherwise.

(B) The consenting defendant is ordered and directed to take such steps as are necessary to secure compliance by its officials and such other persons, described above, with the terms of this Final Judgment.

IV

The consenting defendant is enjoined and restrained from, directly or indirectly:

(A) Entering into, adhering to, maintaining, or claiming any right under any contract, agreement, arrangement, understanding or plan with any person engaged in the printing, distribution or sale of color comic supplements for the purpose or with the effect of:

(1) Hindering, restricting, limiting or preventing any person from engaging in the business of printing color comic supplements;

(2) Hindering, restricting, limiting or preventing any person from selling color comic supplements;

(3) Allocating or dividing customers, territories or markets for the printing or sale of color comic supplements;

(4) Fixing, determining or maintaining prices or any other terms or conditions for the sale of color comic supplements to any third person,

(B) Entering into any license for any individual feature or grouping of features, or fixing a fee charged therefor, or discounting from, or giving rebate upon, such fee, on the condition, agreement or understanding that the licensee shall not purchase color comic supplements from a printer other than one selected, designated or represented by the consenting defendant; provided, however, that combining a fee for the license and a price for printing shall not be deemed to be a violation of this subsection (B), but shall be subject to subsection (C) following:

(C) Entering into or renewing, adhering to, maintaining or claiming any right under any arrangement with any newspaper, for the sale of color comic supplements which include any feature licensed by such consenting defendant, unless such arrangement is reduced to writing and (a) separately provides for or lists the fee for licensing such feature and the price for the printing of the supplements, and (b) provides that such license may at the option of the newspaper remain in effect at the same price for at least three (3) months following the expiration of the contract for the sale of the supplements. Provided, however, that this subsection (C) shall become effective only if, as and when a plant for printing purposes may have been divested pursuant to a Final Judgment entered in this action.

V

(A) Upon entry of this Final Judgment the plaintiff shall be permitted to use such discovery procedures with respect to the consenting defendant as it is entitled to use under Rules 26 through 37 of the Federal Rules of Civil Procedure as to the non-consenting defendants.

(B) Notwithstanding the making and entry of this Final Judgment the plaintiff may, if the Court adjudicates that the defendant Greater Buffalo Press has violated any of the antitrust laws as charged in the complaint filed herein, seek and the Court may order such other relief as to the consenting defendant as the Court may deem necessary and appropriate to dissipate the effects of the unlawful activities that may be found by the Court and to permit and restore competition in interstate trade and commerce in the printing and sale of color comic supplements; provided, however, that the plaintiff in said application for such further relief does not seek an adjudication that the consenting defendant has violated any of the antitrust laws as charged in the said complaint. On any hearing with respect to such other relief the consenting defendant shall have the right to be heard on any issues relevant to a fair judicial inquiry.

(C) The plaintiff will not seek any divestiture relief in this action in the event a Final Judgment may have been entered in its favor, unless it has given notice of such application to the consenting defendant and all other parties to this action, and has afforded them the opportunity to be heard by the Court.

VI

For the purpose of determining or securing compliance with this Final Judgment, and for no other purpose, duly authorized representatives of the Department of Justice shall, upon written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to the consenting defendant, made to its principal office, be permitted, subject to any legally recognized privilege:

(A) Access, during the office hours of said defendant, to all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of said defendant which relate to any matters contained in this Final Judgment;

(B) Subject to the reasonable convenience of said defendant and without restraint or interference from it, to interview its officers and employees, who may have counsel present, regarding any such matters.

Upon such written request of the Attorney General, or the Assistant Attorney General in charge of the Antitrust Division, the consenting defendant shall submit such written reports with respect to any of the matters contained in this Final Judgment as may from time to time be necessary for determining or securing compliance with this Final Judgment,

No information obtained by the means permitted in this Section VI shall be divulged by any employee of the Department of Justice to any person other than a duly authorized representative of the Executive Branch of the plaintiff except in the course of legal proceedings to which the United States is a party for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

VII

Jurisdiction is retained by this Court for the purpose of enabling any of the parties to this Final Judgment to apply to this Court at any time for such further orders and directions as may be necessary or appropriate for the amendment modification or termination of any of the provisions thereof for the enforcement of compliance therewith, and for the punishment of violations thereof.