

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. MCA Inc., U.S. District Court, S.D. California, 1962 Trade Cases ¶70,459, (Oct. 18, 1962)

United States v. MCA Inc.

1962 Trade Cases ¶70,459. U.S. District Court, S.D. California, Central Division. Civil No. 62-942-WM. Entered October 18, 1962. Case No. 1695 in the Antitrust Division of the Department of Justice.

Clayton and Sherman Acts

Business Acquisitions and Holdings—TV Film Producer—Talent Agency—Motion Pictures—Phonograph Records—Consent Judgment.—A producer of filmed television TRADE CASES ¶ 69,446], shows was prohibited by a consent judgment from engaging in the talent agency business and, for a period of seven years, from acquiring or merging with any major television, motion picture, or phonograph record production or distribution company (other than a specified previously acquired record company and its subsidiary motion picture company), unless the Justice Department consents to the acquisition or merger or the producer establishes in court that the acquisition or merger will not unduly restrain or substantially lessen competition.

Tying Arrangements—TV Programs—Motion Picture Films—Phonograph Records—Consent Judgment.—A producer of filmed television shows which also controlled a phonograph record company and a motion picture company was prohibited by a consent judgment from conditioning the sale or license of television programs, motion picture feature films for television exhibition, or phonograph records on the sale or license of any other such program, film, or record.

Acquisitions—License of Motion Picture Films for Television—Consent Judgment.—A motion picture producer was required by a consent judgment to license the distribution of feature films for television exhibition to any responsible television distributor other than its parent company, if it should decide to make film television distribution rights available. If the films are not licensed by a specified date, the producer can distribute the films itself or make an arrangement with a distributor, other than its parent organization, to market them. In the event that the producer merges with its parent organization, they will be prohibited from acting as the distributor of such films prior to a specified date.

For the plaintiff: Leonard R. Posner and Malcolm D. MacArthur, Department of Justice, Antitrust Division, Los Angeles, California.

For the defendant: Beilenson, Meyer, Rosenfeld & Susman, Allen E. Susman, and Albert C. Bickford, Beverly Hills, California.

Final Judgment

CURTIS, District Judge [*In full text*]: Plaintiff, United States of America, having filed its complaint herein on July 13, 1962, and the defendant herein, MCA Inc., having appeared by its attorneys, and hereby denying that any violations of law have been committed by it, and said plaintiff and defendant having each consented to the entry of this Final Judgment herein, without admission by any party in respect to any such issue;

Now, Therefore, before any testimony has been taken and without trial or adjudication of any issue of fact or law herein, and upon consent as aforesaid of the parties hereto, it is hereby

Ordered, Adjudged and Decreed as follows:

I.

[Clayton and Sherman Acts]

This Court has jurisdiction of the subject matter herein and of the parties hereto. The complaint states claims for relief 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," commonly known as the Sherman Act, as amended, and under Section 7 of the Act of Congress of October 15, 1914, as amended, commonly known as the Clayton Act.

II.

[Definitions]

As used in this Final Judgment:

(A) "Elements" means the creatively significant components of a television or motion picture production (including, but not limited to, actors, directors, producers, writers, scripts, etc.).

(B) "Package" means two or more elements designed to be used together in the production of a live, taped or filmed television program or in a theatrical motion picture.

(C) "Program" means a filmed or taped television show, or a series of related episodes (including, without limitation, anthologies) made primarily and originally for free television exhibition in the United States.

(D) "Talent Agency Business" means the business of representing, as artists' manager, creative or performing talent in the entertainment business.

(E) "Feature Film" means a copyrighted motion picture made primarily and originally for theatrical exhibition in the United States, containing four or more reels in length, including Westerns, but excluding motion pictures of strictly educational, religious or industrial character.

(F) "MCA" means defendant MCA, Inc., a Delaware corporation, and its subsidiaries, or any of them; the reference to MCA shall be deemed to include Decca Records, Inc. (hereinafter referred to as Decca) and Universal Pictures Company, Inc., (hereinafter referred to as Universal) and their respective subsidiaries, unless expressly excluded.

III.

[Applicability]

The provisions of this Final Judgment applicable to defendant MCA shall apply to its officers, directors, agents, employees, subsidiaries, successors and assigns, and to those persons in active concert or participation with it who receive notice of the Final Judgment by personal service or otherwise.

IV.

[Acquisitions and Holdings]

Defendant MCA is hereby enjoined and restrained from:

(1) Engaging in the talent agency business, or acquiring any interest in the talent agency business, provided that nothing contained in this sub-paragraph (1) shall affect in any way compensation and/or commissions for past services, and provided further that insofar as the talent agency business of MCA in foreign countries is concerned, MCA shall have the right to discontinue such talent agency business according to the procedures and provisions set forth in paragraph 6 of the 6-page Stipulation and Order made and dated July 23, 1962.

(2) Making, at any time during the period of 7 years from the date of this Judgment, future acquisitions of or mergers with any major television production or distribution company or any major theatrical motion picture production or distribution company or any major phonograph record production or distribution company (other than of or with Decca and/or Universal and/or their respective subsidiaries) unless MCA either obtains and files herein the written consent of the Department of Justice thereto, or, after reasonable notice to the Department of Justice, establishes to the satisfaction of the Court that any such acquisition or merger will not unduly restrain or substantially lessen competition in the television, theatrical motion picture, or phonograph record industries in the United States.

A "major television production or distribution company" for the purposes of this sub-paragraph (2) shall mean Four Star Television, Screen Gems, Inc., Walt Disney Productions, Seven Arts Associated Corporation or Desilu Productions Inc. (including as part of such companies their respective subsidiaries and affiliates) or companies of comparable size to the foregoing as presently constituted.

A "major theatrical motion picture production or distribution company," for the purposes of this sub-paragraph (2), shall mean Metro-Goldwyn-Mayer, Inc., Columbia Pictures Corporation, Paramount Pictures Corporation, United Artists Corporation, Warner Bros. Pictures, Inc., or Twentieth-Century Fox Film Corporation (including as part of such companies their respective subsidiaries and affiliates) or companies of comparable size to the foregoing as presently constituted.

A "major phonograph record production or distribution company," for the purposes of this sub-paragraph (2), shall mean Columbia Record Division of Columbia Broadcasting System, Inc., RCA-Victor Record Division of Radio Corporation of America, Capitol Records, Inc., Liberty Records, Inc., Mercury Record Corporation, or Dot Records Inc. (including as part of such companies their respective subsidiaries and affiliates), or companies of comparable size to the foregoing as presently constituted.

(2) (a) With respect to programs offered for exhibition in the United States, conditioning the offer to license any such program upon the requirement that the offeree thereof license any other programs or any feature films being offered for exhibition in the United States.

(b) With respect to feature films offered or to be offered for television exhibition in the United States, conditioning the offer by MCA to license any one or more feature films upon the requirement that the offeree thereof license any other or others of such feature films or any programs.

(c) With respect to phonograph records offered for sale by MCA in the United States, conditioning the sale of any such phonograph records upon the requirement that the purchaser thereof license any feature films or any programs, or conditioning the license of any feature films or any programs offered for television exhibition in the United States upon the requirement that the licensee thereof purchase any such phonograph records.

V.

[Feature Film Licenses]

(1) For the purposes of this paragraph V "MCA" does not include Decca or Universal or the subsidiaries of Decca or Universal.

(2) If Universal, in its sole discretion shall by June 1, 1963 determine to make available the United States and Canadian free television distribution rights in any of the 229 feature films shown on the attached list [not reproduced], Universal shall publicly announce an upset price at or above which it will negotiate in good faith a license to distribute 215 or more of such feature films with any responsible television distributor other than MCA, which is hereby enjoined from taking such a license. Such upset price shall be the fair market value of the distribution rights offered.

(3) If any offer or offers at or above such upset price is or are received by Universal on or prior to October 1, 1963 from one or more responsible distributors acceptable to the Department of Justice, Universal shall negotiate in good faith a license satisfactory to it for said features.

(4) If no such offer is received by Universal by October 1, 1963, or if no such license is executed within 60 days thereafter, Universal may, in its sole discretion: (a) distribute said features for television through its own organization; (b) withdraw such rights from television; (c) make any arrangements it deems fit other than for the distribution of said features by MCA for television exhibition.

(5) Universal shall not distribute said feature films for United States and Canadian free television through its own organization prior to October 1, 1967 unless and until Universal shall have followed the procedures described in subparagraphs (2), (3) and (4) of this paragraph V.

(6) Any such determination and any such distribution by Universal pursuant thereto shall be made and done by Universal management independently of MCA, and no person who was an officer, director or executive of MCA, on June 18, 1962, or within two years prior thereto, shall participate in such determination or distribution or make any recommendations relating thereto. Distribution by Universal itself, if that occurs, shall be through employees of its own or its subsidiaries who are not now and have not been since June 18, 1962 in the employ of MCA.

(7) In the event that MCA merges with either Decca or Universal, then MCA, Decca and Universal are enjoined from acting as distributor of the United States or Canadian free television rights in any of said 215 features prior to October 1, 1967.

(8) The restrictive and injunctive provisions of this Paragraph V shall apply only to the United States and Canadian free television distribution rights in said 215 features and only until, in any event, October 1, 1967.

VI.

[Notice of Judgment]

Defendant, MCA, Inc., is ordered and directed upon entry of this Final Judgment to advise promptly, in writing, all officers, directors and executives of defendant and its subsidiaries of the terms of this Final Judgment and that each and every such person is subject to the provisions of this Judgment; and it shall make readily available to such persons a copy of this Final Judgment and shall inform them of such availability.

VII.

[Inspection and Compliance]

For the purposes of securing compliance with this Final Judgment, 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 defendant made to its principal office, be permitted:

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

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

Upon such request said defendant shall submit such reports in writing to the Department of Justice with respect to matters contained in this Final Judgment as may from time to time be necessary to the enforcement of this Final Judgment. No information obtained by the means provided in this Section VII shall be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of the executive branch of the United States Government 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.

VIII.

[Jurisdiction Retained]

Jurisdiction is retained 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 construction or carrying out of this Final Judgment or for the modification or termination of any of the provisions thereof, and for the enforcement of compliance therewith and punishment of violations thereof.