

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,	:	
	:	
Plaintiff,	:	
	:	
v.	:	Civil Action No.
	:	70-CIV-3100
MOVIELAB, INC.,	:	Filed: July 20, 1970
	:	
Defendant.	:	
	:	

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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 and complains and alleges as follows.

I

JURISDICTION AND VENUE

1. This complaint is filed under Section 15 of the Act of Congress of October 15, 1914, as amended (15 U.S.C. § 25), commonly known as the Clayton Act, in order to prevent and restrain the violation by the defendant, as hereinafter alleged, of Section 7 of the Clayton Act, as amended (15 U.S.C. § 18), and for equitable relief.

2. Defendant Movielab, Inc. transacts business and is found within the Southern District of New York.

II

THE DEFENDANT

3. Movielab, Inc. (hereinafter referred to as "Movielab") is a corporation organized and existing

under the laws of the State of New York, with its principal office located in New York, New York.

### III

#### DEFINITIONS

4. As used in this complaint:

(a) "New York Metropolitan Area" shall mean the area of the State of New York embracing the Counties of New York, Bronx, Queens, Kings, Richmond, Nassau, Suffolk, Westchester, Rockland, and Putnam together with northern New Jersey.

(b) "Professional Film Processing" shall mean the development, duplication, and other treatment of exposed, negative 16, 35 and 70 mm motion picture film, and the printing and other treatment of positive 16, 35, and 70 mm motion picture film (1) produced for commercial exhibition in theatres (hereinafter referred to as "theatrical film processing"); and (2) produced for television, industrial, advertising, scientific, educational, governmental, and other purposes (hereinafter referred to as "TV-educational film processing").

### IV

#### TRADE AND COMMERCE

5. Professional film processing laboratories develop, duplicate, treat and manufacture prints of professionally made theatrical and TV-educational films. Their customers are generally producers and distributors of such films, many of whom are located in the New York

Metropolitan area. Producers and distributors located in this area generally prefer to employ a laboratory, which is also located in their area for the processing of their films since proximity of the laboratory tends to enable the producer or distributor to achieve speedier and better processing service and greater control over processing details.

6. Some professional film processing laboratories in the New York Metropolitan area derive the major part of their sales volume from theatrical film processing while also processing some TV-educational films. Others derive almost all their sales from the processing of TV-educational films. In many cases, customers for theatrical film processing and TV-educational film processing are different. The processing of theatrical films often involves the manufacture of a large number of prints for distribution to theaters throughout the country. Such films are generally long in length. The processing of TV-educational films does not often involve the manufacture of as many prints as are required for theatrical film processing and TV-educational films are generally of a shorter length than theatrical films. The processing of theatrical films, therefore, requires a substantially larger laboratory facility than does the processing of TV-educational films.

7. In 1969 about \$58,000,000 in professional film processing was performed by professional film processors located in the New York Metropolitan area. Approximately half of this was in the processing of theatrical films with the other half generated by the processing of TV-educational films.

8. Movielab is engaged in professional film processing in New York, New York and sells its professional film processing services in interstate commerce. In 1968, it had sales of \$9,892,250 and as of December 31, 1968 it had current assets of \$11,080,059.

9. Berkey Photo, Inc., a corporation organized and existing under the laws of the State of Delaware, and certain of its subsidiaries (hereinafter referred to collectively as "Berkey") is engaged in processing amateur made films and in manufacturing, importing, distributing and retailing photographic equipment. Prior to the acquisition hereinafter alleged, Berkey also operated two professional film processing laboratories engaged in interstate commerce in New York, New York and one in Hollywood, California. In 1968, Berkey had sales of \$135,138,269 and current assets as of December 31, 1968 of \$62,691,291.

10. During the first six months of 1969, Movielab's sales in all professional film processing were about \$5,258,949, representing about 17 percent of all professional film processing sales in the New York Metropolitan area. Approximately \$1,300,000 was derived from theatrical film processing representing about 9 percent of all such processing in the New York Metropolitan area. During this same period, approximately \$3,900,000 was derived from TV-educational film processing representing about 26 percent of all such processing in the New York Metropolitan area.

11. In the first six months of 1969, Berkey's sales in all professional film processing by its New York laboratories were about \$6,583,000 representing about 22 percent of all professional film processing sales in the New York Metropolitan area. Approximately \$3,900,000 was derived from theatrical film processing representing about 26 percent of all such processing in the New York Metropolitan area. During this same period, approximately \$2,600,000 was derived from TV-educational film processing representing about 18 percent of all such processing in the New York Metropolitan area.

12. The professional film processing industry in the New York Metropolitan area is highly concentrated. During the first six months of 1969, the combined New York Metropolitan area sales of the four leading professional film processors in that area, including Movielab and Berkey, was about \$22,700,000 or about 77 percent of all professional film processing performed in the New York Metropolitan area during that period. During the first six months of 1969, the combined New York Metropolitan area sales of the four leading professional film processors in that area, including Movielab and Berkey, derived from the processing of theatrical films was about \$12,700,000 or about 87 percent of all such processing performed in the New York Metropolitan area during that period. During the first six months of 1969, the combined New York Metropolitan area sales of the four leading professional film processors, including Movielab and Berkey, derived from the processing of TV-educational films was about \$19,700,000 or about 71 percent of all such

processing performed in the New York Metropolitan area during that period.

13. Professional film processing laboratories in the New York Metropolitan area sell their processing services to customers outside the state in which their laboratories are located and the processing of theatrical film and TV-educational film by professional film processing laboratories in the New York Metropolitan area involves the continuous movement of such films between laboratories and customers located throughout that area.

V

OFFENSE CHARGED

14. On or about June 27, 1969, Movielab and Berkey entered into and consummated a Purchase Agreement providing for the acquisition by Movielab of the professional film processing business of Berkey.

15. The effect of the aforesaid acquisition may be substantially to lessen competition or tend to create a monopoly in the New York Metropolitan area in violation of Section 7 of the Clayton Act in the following ways, among others:

- (a) competition between Movielab and Berkey in professional film processing, theatrical film processing and TV-educational film processing has been eliminated;
- (b) actual and potential competition generally in professional film processing, theatrical film processing and TV-educational film processing may be substantially lessened; and

(c) concentration in professional film processing, theatrical film processing and TV-educational film processing has been increased.

PRAYER

WHEREFORE, plaintiff prays:

1. That, pending a final adjudication of the merits of this complaint, a preliminary injunction be issued enjoining the Defendant, its officers, directors, agents, and other persons acting on its behalf from further consolidating or intermingling the business operations of the aforesaid acquired laboratories or their assets or operating personnel with those of Movielab.


2. That the aforesaid acquisition by Movielab of the professional film processing business of Berkey be adjudged a violation of Section 7 of the Clayton Act.

3. That under such terms and conditions as this Court may prescribe, Movielab be required to divest itself of all the property acquired from Berkey pursuant to the Movielab-Berkey Purchase agreement referred to in paragraph 14 herein.

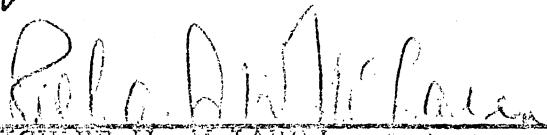
4. That for a period of five years, except with approval of the plaintiff or of the Court, Movielab, its successors and assigns, its officers, directors, agents, employees, and all other persons acting or claiming to act on its behalf be enjoined from acquiring the stock or assets of any professional film processor.

5. That the plaintiff have such other and further relief as may be just and proper.

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


  
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