

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TENNESSEE
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

TIMES PRINTING COMPANY,

Defendant.

CIVIL ACTION NO.: 5836

Filed: February 24, 1970

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 and this action is instituted under Section 4 of the Act of Congress of July 2, 1890, as amended (15 U.S.C. § 4), commonly known as the Sherman Act, in order to prevent and restrain the continuing violation by the defendant, as hereinafter alleged, of Section 2 of said Act (15 U.S.C. § 2).

2. Defendant Times Printing Company maintains offices, transacts business and is found within the Eastern District of Tennessee, Southern Division.

II. THE DEFENDANT

3. Times Printing Company, hereinafter referred to as "Times Printing", is made a defendant herein. It is a corporation organized and existing under the laws of the

State of Tennessee and has its principal place of business in Chattanooga, Tennessee. Times Printing is engaged in the business of publishing daily newspapers in Chattanooga, Tennessee. The majority of the stock of Times Printing is owned by the "Trust under Paragraph 51 of the Will of Adolph S. Ochs, deceased", hereinafter referred to as the "Ochs Trust".

III. INTERSTATE TRADE AND COMMERCE

4. There are three daily newspapers published in Chattanooga, Tennessee. (In this Complaint the terms "daily newspapers" or "newspapers" always mean newspapers of general circulation published five or more days a week). These are the Chattanooga Times, a morning and Sunday newspaper, and the Chattanooga Post, an evening newspaper, published by the defendant, and the Chattanooga News-Free Press, an evening and Sunday newspaper published by the News-Free Press Company (hereinafter referred to as "Free Press"). Substantial numbers of each of these newspapers are distributed and sold in Chattanooga, elsewhere in the State of Tennessee, and in other states of the United States. The average daily or Sunday paid circulations of these newspapers for the twelve months ending September 30, 1968, were: Times (morning) 59,939; Times (Sunday) 68,589; Post (evening) 23,505; News-Free Press (evening) 63,132; News-Free Press (Sunday) 43,370.

5. Daily newspapers require a constant flow of news, features and other information for dissemination to their readers. A substantial amount of such news, features and other information is regularly gathered from all parts of the United States and is distributed and delivered by various means in interstate commerce to the daily newspapers published in Chattanooga. This news and other information is immediately and continuously disseminated by the newspapers to persons

in and around Chattanooga, to persons elsewhere in the State of Tennessee, and to persons in other states of the United States.

6. Daily newspapers derive their revenues from the sale of the newspaper to subscribers and from the sale of advertising space in the newspaper to advertisers. Approximately 25% of the operating revenues of the daily newspapers published in Chattanooga are derived from newspaper sales and 75% of operating revenues are derived from advertising sales.

7. The daily newspapers published in Chattanooga sell three classes of newspaper advertising. These are retail (or local display), used by most local retailers and accounting for about 65% of total advertising revenue; classified, which accounts for about 25% of total advertising revenue; and national, used by national advertisers and accounting for about 10% of total advertising revenue. There are separate rate structures for each of the three classes of advertising.

8. The daily newspapers published in Chattanooga sell substantial amounts of advertising to advertisers located outside the State of Tennessee. In the sale of such advertising there is a continuous flow in interstate commerce of advertising contracts, copy and payments between advertisers and the newspapers. Such advertising is regularly disseminated by the newspapers to persons in and around Chattanooga, to persons elsewhere in the State of Tennessee, and to persons in other states of the United States.

9. A substantial amount of the retail and classified advertising placed in the daily newspapers published in

Chattanooga by local retailers and suppliers creates a demand for products produced outside the State of Tennessee and results in the sale and delivery of a substantial amount of such goods to purchasers located in and around Chattanooga and elsewhere in the State of Tennessee.

10. The daily newspapers published in Chattanooga are the only means by which most of the residents of the Chattanooga area can receive, on a daily basis and in a printed form, local news and advertising. These newspapers also provide, at the same time, national and international news, national advertising and syndicated features.

11. The daily newspapers published in Chattanooga are the only means by which most advertisers can reach a large number of their customers on a daily basis in a printed form. Daily newspapers are an essential advertising medium for most firms wishing to effectively promote the sale of goods and services in the area in which the newspapers are circulated.

IV. BACKGROUND OF THE OFFENSE

12. During the period from approximately August 31, 1936 through May 4, 1942 Times Printing and Free Press published daily newspapers in competition with each other in Chattanooga. During the latter part of this period Free Press published an evening and Sunday newspaper while Times Printing published a morning, evening and Sunday newspaper. On or about May 5, 1942 the two companies entered into a joint operating agreement. Pursuant to this agreement, which was in effect through August 27, 1966, the commercial operations of the newspapers were conducted jointly while the news and editorial departments remained separate. Following the commencement of joint operations

Free Press terminated its Sunday edition and Times Printing ceased publication of its evening newspaper. Both companies operated at a profit under the joint operating agreement.

13. On or about February 21, 1964 Free Press notified Times Printing of its intention to terminate the joint operating agreement and to resume totally separate publication of its own newspaper. Separation of the newspapers occurred on August 27, 1966. On the following day Free Press resumed publication of a Sunday edition. On August 29 Times Printing commenced publication of the Chattanooga Post.

V. OFFENSE CHARGED

14. Commencing on or about February 21, 1964 and continuously thereafter to the date of the filing of this complaint the defendant has been engaged in an attempt to monopolize the above described interstate trade and commerce in violation of Section 2 of the Sherman Act. The defendant will continue said attempt to monopolize, with the substantial likelihood of success, unless the relief hereinafter prayed for is granted.

15. The attempt to monopolize alleged in Paragraph 14 has consisted of a continuing effort by the defendant to eliminate its only competitor, Free Press, from the Chattanooga daily newspaper market. The aforesaid attempt to monopolize has been and is being carried out in the following ways, among others:

- (a) Publication of the Chattanooga Post was commenced and continued for the sole purpose of eliminating the Free Press as a competitor;
- (b) Defendant has intentionally operated its newspapers at substantial losses which to date have totalled approximately \$7 million;

continuing operation of the newspapers has been made possible by advances of approximately \$6 million made to Times Printing by the Ochs Trust;

- (c) Advertising rates have been established and maintained at levels which are unreasonably low;
- (d) Advertising space has been sold to selected advertisers at rates lower than those appearing on the published rate cards;
- (e) Optional combination rates for retail advertising have been established at unreasonably low levels;
- (f) Certain retail advertisers have been induced to decrease their advertising in the Free Press Newspaper as a result of their being charged less for advertising space in defendant's two daily newspapers than for advertising space in one;
- (g) Advertisers have not been allowed to purchase classified advertising space in either of defendant's daily newspapers separately, but have been required to purchase space in both;
- (h) Subscriptions to the Chattanooga Post have been sold at unreasonably low rates for the purpose of depriving the Free Press newspaper of subscribers.

VI. EFFECTS

16. The aforesaid offense has had the following intended effects, among others:

- (a) Advertising and circulation revenues have been diverted from Free Press to Times Printing.

(b) Free Press has been forced to operate at a loss, and its ability to continue publication of its newspaper placed in jeopardy.

PRAYER

WHEREFORE: Plaintiff prays,

1. That the Court adjudge and decree that Times Printing has been engaged in an attempt to monopolize interstate trade and commerce in violation of Section 2 of the Sherman Act.

2. That Times Printing be enjoined and restrained from continuing to operate either of its newspapers at a loss for the purpose or with the probable effect of eliminating competition.

3. That Times Printing be enjoined and restrained from refusing to contract to sell or refusing to sell advertising in either one of its newspapers separate from advertising in its other newspaper.

4. That Times Printing be enjoined and restrained from selling advertising in either one of its newspapers, in combination with its other newspaper, at a rate which is less than the sum of the separate rates minus a discount reflecting cost savings only.

5. That Times Printing be enjoined and restrained from establishing or maintaining advertising rates for either of its newspapers at levels lower than those at which it can reasonably expect to operate such newspaper at a profit, where such rates are established or maintained for the purpose or with the probable effect of eliminating competition.

6. That Times Printing be enjoined and restrained from selling or offering to sell advertising in either of its newspapers at rates lower than those at which it can reasonably expect to operate such newspaper at a profit, where such

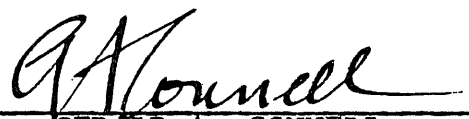
sales or offers to sell are made for the purpose or with the probable effect of eliminating competition.

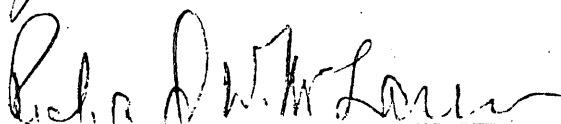
7. That Times Printing be enjoined and restrained from selling or offering to sell either of its newspapers at rates lower than those which could reasonably be anticipated to cover direct circulation costs, where such rates are established or maintained for the purpose or with the probable effect of eliminating competition.

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


9. That the plaintiff recover the costs of this action.


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