UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA, United States Department of Justice Antitrust Division Merger Task Force 1401 H Street, NW Suite 4000 Washington, DC 20530 Plaintiff, v. CHANCELLOR MEDIA CORPORATION 300 Crescent Court; Suite 600 Dallas, TX 75201 and KUNZ & COMPANY 60 E. Sir Francis Drake Blvd. Larkspur, CA 94939 Defendants.	:	Civil Action No. **COMPLAINT FOR INJUNCTIVE RELIEF AGAINST COMBINATION IN VIOLATION OF SECTION 7 OF THE CLAYTON ACT**

The United States of America, acting under the direction of the Attorney General of the United States, brings this action to prevent the proposed acquisition of Kunz & Company (“Kunz”) by Chancellor Media Corporation (“Chancellor”).

I. Nature of the Action

1. Chancellor and Kunz sell outdoor advertising space, such as on billboards, to local and national customers. They compete head-to-head to sell outdoor advertising in four counties: (1) Kern County, California; (2) Kings County, California; (3) Inyo County, California; and (4) Mojave County, Arizona (subsequently referred to as "the Four Counties").

2. If Chancellor acquires Kunz, competition will be lessened substantially in the Four Counties. The transaction would give Chancellor a virtual monopoly in some outdoor advertising markets and a 58 percent or higher share of the revenues in other markets throughout the Four Counties.

3. Unless the acquisition is blocked, the loss of competition in the Four Counties likely will result in advertisers paying higher prices and receiving a reduction in the quality of services offered.

II. Jurisdiction and Venue

4. This action is filed pursuant to Section 15 of the Clayton Act, as amended, 15 U.S.C. § 25, to obtain equitable relief to prevent a violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18.

5. In each of the Four Counties, Chancellor and Kunz regularly contract with customers for the sale of outdoor advertising, a commercial activity that substantially affects, and is in the flow of, interstate commerce. The Court has jurisdiction over the

subject matter of this action and over the parties pursuant to 15 U.S.C. §§ 22 and 25, and 28 U.S.C. §§ 1331 and 1337.

6. Venue in this District is proper under 15 U.S.C. § 22 and 28 U.S.C. § 1391(c).

III. <u>Defendants and the Transaction</u>

7. Chancellor, a large nationwide operator of media businesses, including outdoor advertising, is a Delaware corporation headquartered in Dallas, Texas. Chancellor conducts some outdoor advertising business through its subsidiary, Martin MacFarlane, Inc. ("Martin"), a California corporation also headquartered in Dallas, Texas. Martin sells outdoor advertising in several states throughout the United States, including in each of the Four Counties.

8. Kunz is a California corporation, headquartered in Larkspur, California. Kunz sells outdoor advertising in California and Arizona, including in each of the Four Counties.

9. On September 30, 1998, Chancellor entered into an Asset Purchase Agreement with Kunz. Chancellor agreed to purchase certain assets of Kunz used or useful in the outdoor advertising business of Kunz in the United States. The transaction is valued at approximately $39.5 million.

IV. <u>Trade and Commerce</u>

10. Outdoor advertising companies generate their revenue from the sale of advertising space to local and/or national businesses that want to promote their products and services.

11. Advertisers select outdoor advertising based upon a number of factors including, <u>inter</u> <u>alia</u>, the size of the target audience (individuals most likely to purchase the advertiser's products or services), the traffic patterns of the audience, and other audience characteristics. Many advertisers seek to reach a large percentage of their target audience by selecting outdoor advertising on highways and roads where vehicle traffic is high, so that the advertising will be frequently viewed by the target audience, or where the vehicle traffic is close to the advertiser's location. If outdoor advertising spaces owned by different firms would efficiently reach that target audience, advertisers benefit from the competition among outdoor advertising providers to offer better prices or services. Many local and/or national advertisers purchase outdoor advertising because outdoor advertising space is less expensive and more cost-efficient than other media at reaching the advertiser's target audience with the type of advertising message that the advertiser prefers to deliver.

12. Outdoor advertising has prices and characteristics that are distinct from other advertising media. An advertiser's evaluation of the importance of these characteristics depends on the type of advertising message the advertiser wishes to convey

and the price the advertiser is willing to pay to deliver that message. Many advertisers who use outdoor advertising also advertise in other media, including radio, television, newspapers and magazines, but use outdoor advertising when they want a large number of exposures to consumers at a low cost per exposure. Because each exposure is brief, outdoor advertising is most suitable for highly visual, limited information advertising.

V. <u>Relevant Product and Geographic Markets</u>

13. For many advertising customers, outdoor advertising's particular combination of characteristics makes it an advertising medium for which there are no close substitutes. Such customers who want or need to use outdoor advertising would not switch to another advertising medium if outdoor advertising prices increased by a small but significant amount.

14. Although some local and national advertisers may switch some of their advertising to other media, rather than absorb a price increase in outdoor advertising space, the existence of such advertisers would not prevent outdoor advertising companies in the Four Counties from profitably raising their prices a small but significant amount. At a minimum, outdoor advertising companies could profitably raise prices to those advertisers who view outdoor advertising as a necessary advertising medium for them, or as a necessary advertising complement to other media. Outdoor advertising companies negotiate prices individually with advertisers. During individual price negotiations

between advertisers and outdoor advertising companies, advertisers provide the outdoor advertising companies with information about their advertising needs, including their target audience and the desired exposure. Outdoor advertising companies thus have the ability to charge advertisers differing prices based in part on the number and attractiveness of competitive outdoor advertising companies that can meet a particular advertiser's specific target needs. Because of this ability to price discriminate among customers, outdoor advertising companies may charge higher prices to advertisers that view outdoor advertising as particularly effective for their needs, while maintaining lower prices for other advertisers.

15. For those advertisers who desire to use outdoor advertising to reach consumers in the Four Counties, there are no reasonable substitutes for outdoor advertising located within each of the Four Counties; in particular, a small but significant increase in the price of outdoor advertising in each of the Four Counties would not cause advertisers to turn to outdoor advertising in other counties or to other types of advertising media.

16. In the Four Counties, outdoor advertising constitutes a relevant product market and a line of commerce; each county constitutes a relevant geographic market and a section of the country.

VI. Concentration

17. In each of the Four Counties, the market for outdoor advertising is highly concentrated. Using a measure of market concentration called the Herfindahl-Hirschman Index ("HHI"), explained in Appendix A annexed hereto, a combination of Chancellor and Kunz would substantially increase concentration in each of the four relevant markets.

18. In Kern County, California, Chancellor's share of the outdoor advertising market, based on advertising revenues, would increase to about 83 percent. The approximate post-merger HHI would be 7046, representing an increase of about 1820.

19. In Kings County, California, Chancellor's share of the outdoor advertising market, based on advertising revenues, would increase to about 58 percent. The approximate post-merger HHI would be 4205, representing an increase of about 714.

20. In Inyo County, California, Chancellor's share of the outdoor advertising market, based on advertising revenues, would increase to about 96 percent. The approximate post-merger HHI would be 9232, representing an increase of about 4030.

21. In Mojave County, Arizona, Chancellor's share of the outdoor advertising market, based on advertising revenues, would increase to about 62 percent. The approximate post-merger HHI would be 4340, representing an increase of about 770.

VII. Anticompetitive Effects

22. In each of the Four Counties, Chancellor and Kunz compete head-to-head and, for many local and/or national advertisers buying outdoor advertising space, they are close substitutes for each other. During individual price negotiations, advertisers that desire to reach a certain audience can help ensure competitive prices by "playing off" Kunz against Chancellor. Chancellor’s acquisition of Kunz will end this competition. After the acquisition, such advertisers will be unable to reach their desired audiences with equivalent efficiency without using Chancellor’s outdoor advertising. Because advertisers seeking to reach these audiences would have inferior alternatives to the merged entity as a result of the acquisition, the acquisition would give Chancellor the ability to raise prices and reduce the quality of its service to some of its advertisers in each of the Four Counties.

23. New entry into the outdoor advertising market in response to a small but significant price increase by the merged parties in any of these markets is unlikely to be timely and sufficient to render the price increase unprofitable.

VIII. Violation Alleged

24. In each of the Four Counties, the effect of the proposed acquisition of Kunz by Chancellor would be to lessen competition substantially in interstate trade and commerce, in violation of Section 7 of the Clayton Act in the following ways, among others:

(a) actual and potential competition between Chancellor and Kunz in the business of outdoor advertising will be eliminated;

(b) competition generally in the business of outdoor advertising would be substantially lessened; and

(c) the prices for outdoor advertising would likely increase, and services would likely decline.

IX. Requested Relief

The plaintiff requests: (a) adjudication that Chancellor's proposed acquisition of Kunz would be a violation of Section 7 of the Clayton Act; (b) preliminary and permanent injunctive relief preventing the consummation of the proposed acquisition; (c) an award to the United States of the costs of this action; and (d) such other relief as is proper.

Dated: November ____, 1998

______________________	______________________
Joel I. Klein	Craig W. Conrath, Chief
Assistant Attorney General	Reid B. Horwitz, Assistant Chief

Donna E. Patterson
Deputy Assistant Attorney General

Susan M. Davies
Senior Counsel

Constance K. Robinson
Director of Merger Enforcement and
Director of Operations

Barry L. Creech, Trial Attorney
D.C. Bar No. -- 421070

U.S. Department of Justice
Antitrust Division
Merger Task Force
1401 H Street, NW, Suite 4000
Washington, DC 20530
(202) 307-0001

APPENDIX A
HERFINDAHL-HIRSCHMAN INDEX CALCULATIONS

"HHI" means the Herfindahl-Hirschman Index, a commonly accepted measure of market concentration. It is calculated by squaring the market share of each firm competing in the market and then summing the resulting numbers. For example, for a market consisting of four firms with shares of thirty, thirty, twenty, and twenty percent, the HHI is 2600 ($30^2 + 30^2 + 20^2 + 20^2 = 2600$). The HHI takes into account the relative size and distribution of the firms in a market and approaches zero when a market consists of a large number of firms of relatively equal size. The HHI increases both as the number of firms in the market decreases and as the disparity in size between those firms increases.

Markets in which the HHI is between 1000 and 1800 points are considered to be moderately concentrated, and those in which the HHI is in excess of 1800 points are considered to be concentrated. Transactions that increase the HHI by more than 100 points in concentrated markets presumptively raise antitrust concerns under the Horizontal Merger Guidelines issued by the U.S. Department of Justice and the Federal Trade Commission. See *Merger Guidelines* § 1.51.

Certificate of Service

I, Barry L. Creech, hereby certify that, on November ____, 1998, I caused the foregoing document to be served on defendants Kunz & Company and Chancellor Media Corporation by having a copy mailed, first- class, postage prepaid, to:

Steven H. Schulman
Bruce J. Prager
Latham & Watkins
1001 Pennsylvania Ave., NW
Suite 1300
Washington, DC 20004
Counsel for Chancellor Media Corporation

Riccarda Heising
Powell, Goldstein, Frazer & Murphy LLP
191 Peachtree Street, NE
16th Floor
Atlanta, GA 30603
Counsel for Kunz & Company

____
Barry L. Creech
D.C. Bar No. - 421070