

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	Civil No. 78 CIV 2491
)	
vs.)	Filed: June 1, 1978
)	
CBS, INC.,)	
)	
Defendant.)	

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 15 of the Clayton Act, as amended (15 U.S.C. §25), in order to restrain the continued violations by the defendant, as hereinafter alleged, of Section 7 of the Clayton Act, as amended (15 U.S.C. §18).

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

II

THE DEFENDANT

3. CBS, Inc. (hereinafter referred to as "CBS") is made a defendant herein. CBS is a corporation organized

and existing under the laws of New York, with its principal office located at 52 West 52nd Street, New York City. CBS is engaged in radio and television broadcasting, book publishing, music recording and a variety of other businesses.

III

TRADE AND COMMERCE

4. Mass market paperback books are paperbound books usually of standard rack size (4 1/4" x 7"). They are distributed predominantly to mass market outlets such as newsstands, drug stores and variety stores by local wholesale distributors. They sell at an average price substantially lower than the price of trade paperbound books and hardcover books. Mass market paperback books differ from all other books in their method of distribution, price, size, components, production facilities and marketing methods. There is widespread public, industry and government recognition of mass market paperback books as a separate line of business.

5. Mass market paperback books are either original publications or reprints of material that has previously been published in hardcover form. Mass market paperback book publishers compete with each other to acquire original or reprint rights from authors or from hardcover trade publishers. Mass market paperback book publishers compete with each other in the promotion, distribution and sale of their books to the general public.

6. Mass market paperback books are distributed predominantly by national distributors to local wholesale distributors who in turn distribute them to mass market outlets. Local wholesale distributors generally also handle magazines. There are approximately eleven national distributors of mass market paperback books with the eight largest accounting in 1976 for about 93% of sales through this distribution channel. Each of the eight largest national distributors is owned by a mass market paperback publisher. Approximately 23% of mass market paperback books are distributed directly to bookstores, and 10% are distributed directly to chain accounts. Retailers and local wholesalers normally are permitted to return for full credit the covers of unsold mass market paperback books.

7. At the present time there are approximately twenty firms engaged in the publication of mass market paperback books in the United States. In 1976 the dollar value of sales of mass market paperback books by publishers was approximately \$390 million, and the value of sales by retailers was approximately \$740 million.

8. The mass market paperback publishing business is concentrated and is experiencing a trend towards further concentration. In 1973 the eight largest firms accounted for approximately 76% and the four largest firms for 51% of total sales. In 1976 the eight largest firms accounted for 81% and the four largest firms for 53%. Between 1973 and 1976 concentration increased by about 2.6%, at the four firm level, and by about 6.7% at the eight firm level.

9. There are substantial barriers to entry into the business of publishing mass market paperback books. These barriers result in part from allocation of rack space at mass market paperback outlets, the difficulty of obtaining national distribution and the difficulty of competing for bookstore sales without a significant backlist. In the past decade there have been no significant new entrants, and several small firms have exited the market.

10. CBS at the time of the acquisition herein-after alleged was engaged in the publication of mass market paperback books through its subsidiary, Popular Library. Between the time of its acquisition by CBS in 1971 and CBS' acquisition of Fawcett in 1977, Popular Library accounted on the average for approximately 2.6% of total annual domestic dollar sales of mass market paperback books. In 1976 it ranked 11th among all firms with mass market paperback sales of approximately \$10.4 million, and a market share of about 2.6%.

11. Fawcett Publications, Inc., at the time of its acquisition by CBS, Inc., as hereinafter alleged, was a corporation engaged in the publication, marketing and distribution of mass market paperback books and in the publication and distribution of magazines. During the period 1970-1976 Fawcett accounted on the average for approximately 10.4% of total annual domestic dollar sales of mass market paperback books. In 1976 Fawcett ranked fifth among all firms with mass market paperback sales of about \$37 million and a market share of about 9.4%.

12. CBS, at all relevant times, has been and Fawcett was, until the time of its acquisition by CBS, engaged in interstate commerce. Both companies have sold and shipped substantial quantities of mass market paperback books from locations in one state to locations in other states throughout the United States.

IV

VIOLATION ALLEGED

13. On or about January 7, 1977, CBS acquired all of the outstanding shares of Fawcett for about \$50 million in cash.

14. The effect of the acquisition alleged in paragraph 13 may be substantially to lessen competition or to tend to create a monopoly in the aforesaid interstate trade and commerce in violation of Section 7 of the Clayton Act in the following ways, among others:

- a. Competition between CBS and Fawcett has been eliminated;
- b. Competition generally may be substantially lessened; and
- c. Concentration has been increased to the detriment of actual and potential competition.

PRAYER

WHEREFORE, Plaintiff prays:

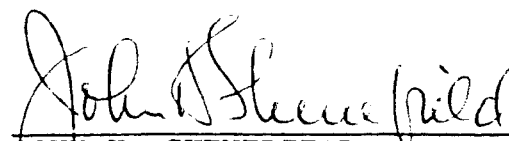
1. That the acquisition of Fawcett by CBS, described herein, be adjudged a violation of Section 7 of the Clayton Act.

2. That under such terms and conditions as the Court may prescribe, defendant CBS be required to divest itself of the unlawfully acquired stock and assets as will be required to restore Fawcett to its pre-acquisition competitive posture.

3. That defendant CBS, its officers, directors, agents and all other persons acting on its behalf, be enjoined from acquiring the stock or assets of any firm engaged in the publishing, distribution or sale of mass market paperback books.

4. That the plaintiff have such other and further relief as the nature of this case may require and as this Court may deem just and proper.

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


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