

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

LEWIS M. MANDERSON, JR. and
PATRICK MEDIA GROUP OF
ATLANTA, INC.,

Defendants.

Civil Action No. C87-2239A

10/9/87

VERIFIED COMPLAINT

The United States of America, by its attorneys, acting under the direction of the Attorney General of the United States, brings this civil action to obtain equitable and other relief against the defendants named herein 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, 15 U.S.C. § 25, to prevent and restrain the violation by the defendants, as hereinafter alleged, of Section 7 of the Clayton Act, 15 U.S.C. § 18.

2. Venue is proper under Section 12 of the Clayton Act, 15 U.S.C. §22, with respect to Patrick Media Group of Atlanta, Inc., since it maintains offices and transacts business in the Northern District of Georgia. Venue is proper under 28 U.S.C. §1391, with respect to Lewis M. Manderson, Jr., since he resides in the Northern District of Georgia.

II.

DEFINITIONS

3. "Atlanta area" means all of Clayton, Cobb, DeKalb, Fulton, and Gwinnett counties in Georgia, including the City of Atlanta.

4. "Outdoor advertising" means all forms of advertising on painted bulletin billboards, poster panel billboards and 8-sheet billboards.

5. "HHI" means the Herfindahl-Hirschman Index, a measure of market concentration 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 30, 30, 20, and 20 percent, the HHI is 2600 (30 squared + 30 squared + 20 squared + 20 squared = 2600). The HHI, which takes into account the relative size and distribution of the firms in a market, ranges from virtually zero to 10,000. The index approaches zero when a market is occupied by a large number of firms of relatively equal size.

The index increases as the number of firms in the market decreases and as the disparity in size between the leading firms and the remaining firms increases.

III.

DEFENDANTS

6. Lewis M. Manderson, Jr. ("Manderson") is made a defendant. His office is at 200 Galleria Parkway, Suite 640, Atlanta, Georgia. He is the controlling owner of Turner Outdoor Advertising, Ltd. ("Turner Outdoor"), a firm engaged in the business of providing outdoor advertising services in the Atlanta area. Turner Outdoor maintains its principal offices at 732 Ashby Street, N.W., Atlanta, Georgia, and had outdoor advertising revenues of over \$16 million in 1986.

7. Patrick Media Group of Atlanta, Inc. ("Patrick") is made a defendant. Patrick is a corporation organized and existing under the laws of the state of Delaware. It maintains its principal offices at 3745 Atlanta Industrial Drive, Atlanta, Georgia. Patrick is in the business of providing outdoor advertising services in the Atlanta area. Patrick and its predecessor in the Atlanta area had outdoor advertising revenues of about \$6 million in 1986.

IV.

TRADE AND COMMERCE

8. Outdoor advertising is another name given to standardized billboard advertising in the United States. There are several types of billboards.

9. The largest type of billboard is the "painted bulletin." The standard size of a painted bulletin is 14' x 48' and painted bulletins may have cut-outs or embellishments on the top, bottom or side, adding to the overall area and visual effect. The advertising messages on a painted bulletin are usually painted by an artist. Painted bulletin billboards are frequently sold singly to an advertiser at a negotiated rental that depends primarily on the billboard's location. Painted bulletins sold in this fashion are called "permanent painted bulletins" and command, on average, the highest rent of any type of billboard. Painted bulletins are also rented as part of "rotary" plans by billboard companies. A rotary plan consists of rotating an advertiser's painted bulletin message to a number of well distributed painted bulletin locations within a metropolitan area. A relatively low number of painted bulletin billboards are smaller 12' x 25' billboards. For Turner Outdoor and Patrick, these smaller painted bulletins are less than 10% of their total number of painted bulletins. Painted bulletins are

usually sold to advertisers for longer contract periods than other types of billboards because of the high initial expense in painting the advertiser's message or illustration, and because paint is longer-wearing than a printed poster. Painted bulletins are usually located adjacent to interstate highways and high traffic arterials.

10. A second type of standardized billboard is the "poster panel." Poster panel billboards are also sometimes referred to as a "24-sheet Poster," a "30-sheet Poster" or a "Bleed Poster." These latter terms generally refer to the printed copy area on the poster panel billboard. Poster panels are approximately 12' high by 25' long and are customarily sold in packages called "showings." A "100 showing" of poster panels means that the billboard company will provide enough geographically well-distributed poster panels in order to deliver in one day a number of exposure opportunities, as measured by the traffic count past all the poster panels included in the showing, equal to 100% of the population of that particular market. In the Atlanta area, for example, a 100 showing requires approximately 120 poster panels. The advertising message on a poster panel billboard is carried on a printed paper poster. Poster panels are nearly always sold in groups by billboard companies and usually for a shorter contract period than painted bulletin billboards. Poster panels are generally located adjacent to primary arterial roads

and busy secondary streets. The rental for each poster panel in a showing averages about one-fifth of the rental for each painted bulletin in a rotary.

11. A third type of billboard is the "8-sheet," sometimes referred to as a "junior billboard." An 8-sheet is approximately 6' x 12'. An advertiser's message on an 8-sheet is usually carried on a printed paper poster. In the Atlanta area, nearly all 8-sheet locations are in inner city areas, and 8-sheets are usually sold in packages directed to residents of the areas in which they are located. An 8-sheet rents, on average, for less than one-third the rent of a poster panel.

12. Many customers using outdoor advertising also advertise in other media, especially radio, television, newspapers, and magazines. Outdoor advertising, however, has distinct prices from other advertising media and has distinct characteristics from the other advertising media. Outdoor advertising provides a large number of exposures to consumers at a low cost per exposure. Each exposure, however, is necessarily brief, making outdoor advertising more suitable for highly visual, non-informational advertising.

13. There is no reasonable substitute to which a significant number of customers would turn in response to a small but significant and non-transitory increase in the price of outdoor advertising.

14. Outdoor advertising constitutes a line of commerce and relevant product market for antitrust purposes. In 1986, in the Atlanta area, total outdoor advertising sales were approximately \$28 million.

15. The Atlanta area includes the City of Atlanta and the five populous counties that include and surround that city. The vast majority of the population of the greater Atlanta region lives or works in the Atlanta area and most of that region's commercial activity occurs in the Atlanta area. Advertisers who desire to employ outdoor advertising to reach the Atlanta consumer market have no reasonable substitute for billboards located within the Atlanta area; in particular, a small but significant and non-transitory increase in the price of outdoor advertising in the Atlanta area would not cause advertisers to turn to billboards located in more rural counties outside of the Atlanta area. Turner Outdoor has located 90% of its billboard sites and Patrick has located 95% of its billboard sites in the Atlanta area. The Atlanta area constitutes a section of the country and relevant geographic market for antitrust purposes.

16. Turner Outdoor and Patrick are the only companies that offer a full line of billboards in the Atlanta area. Together, Turner Outdoor and Patrick control over 75% of all full-size

(i.e., painted bulletin and poster panel) billboards in the Atlanta area and over two-thirds of all billboards in the Atlanta area, including 8-sheets. They are the only sellers of poster panel billboards and are two of only three sellers of painted bulletin rotary billboard service in the Atlanta area. A combined Turner Outdoor-Patrick entity would control nearly 4,000 painted bulletin and poster panel billboards in the Atlanta area, more than six times the total of the next largest outdoor advertising company in the Atlanta area and approximately twenty times the total of the third.

17. The proposed acquisition of Patrick by Manderson, the controlling owner of Turner Outdoor, would raise Turner Outdoor's share of outdoor advertising sales in the Atlanta area from 48% to approximately 68%, more than triple the sales of the next largest firm and thirty-five times the sales of the third. The HHI will increase by approximately 1917 points, to 5103. A market with an HHI of above 1800 is highly concentrated.

18. Entry into outdoor advertising in the Atlanta area is not easy. Among the reasons that entry is not easy are the increasing amount of government regulation limiting billboard construction, the scarcity of suitable billboard sites within the Atlanta area, and particularly within the I-285 Perimeter around Atlanta, and the necessity of obtaining a sufficient number and geographic dispersion of billboard sites in order to be an effective competitor.

19. Manderson, through Turner Outdoor, and Patrick regularly contract with customers outside the state of Georgia for the sale of outdoor advertising in the Atlanta area and regularly receive outdoor advertising materials from outside of Georgia. Manderson, through Turner Outdoor, and Patrick are each engaged in interstate commerce, and their activities are in the flow of, and substantially affect, interstate commerce.

V.

VIOLATION ALLEGED

20. On or about August 5, 1987, Manderson agreed to acquire substantially all of the business assets of Patrick used or usable in the outdoor advertising business in the Atlanta area for approximately \$21 million.

21. The effect of Manderson's acquisition of Patrick's outdoor advertising business in the Atlanta area may be substantially to lessen competition in outdoor advertising in the Atlanta area in violation of Section 7 of the Clayton Act, in the following ways, among others:

- a. actual and potential competition between Turner Outdoor and Patrick in outdoor advertising in the Atlanta area will be eliminated;
- b. competition generally in outdoor advertising in the Atlanta area may be substantially lessened.

PRAYER

WHEREFORE, plaintiff prays:

1. That pending final adjudication of the merits of this Complaint, a temporary restraining order and a preliminary injunction be issued against the defendants preventing and restraining each of them, and all persons acting on their behalf, from taking any action, either directly or indirectly, in furtherance of the proposed acquisition of Patrick;

2. That the proposed acquisition of Patrick's outdoor advertising business by Manderson be adjudged to be in violation of Section 7 of the Clayton Act;

3. That the defendants and all persons acting on their behalf be permanently enjoined from carrying out any agreement, understanding, or plan, the effect of which would be to combine the outdoor advertising businesses of Turner and Patrick;

4. That the plaintiff have such other and further relief as the Court may deem just and proper; and

5. That plaintiff recover the costs of this action.

Dated:



CHARLES F. RULE
Assistant Attorney General



D. BRUCE PEARSON



JOHN W. CLARK



JOHN F. GREANEY



FRED E. HAYNES



MOLLY L. DEBUSSCHERE

Attorneys, Antitrust Division
U.S. Department of Justice



STEVEN BRODSKY

United States Attorney
Northern District of Georgia



THOMAS H. LIDDLE

Attorneys, Antitrust Division
U.S. Department of Justice
Judiciary Center Building
555 4th Street, N.W.
Washington, D.C. 20001
(202) 724-8314

CAROL J. BROWN
Georgia Bar #0086575

Attorney, Antitrust Division
U.S. Department of Justice
1394 Richard B. Russell Building
75 Spring Street, S.W.
Atlanta, GA 30303
(404) 331-7114

VERIFICATION

I, D. Bruce Pearson, declare:

1. I am an attorney with the United States Department of Justice, Antitrust Division.

2. I verify that the foregoing Complaint for and on behalf of the United States of America was duly prepared under the direction of the Attorney General of the United States; that the facts stated therein have been assembled by authorized employees and counsel for the United States of America; and that the allegations therein are true and correct to the best of my knowledge, information, and belief.

3. I declare under penalty of perjury that the foregoing is true and correct.

Executed at Washington, D.C. on October 8, 1987.



D. BRUCE PEARSON