

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
(ATLANTA DIVISION)

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
) Civil No. C 76-435-A
 v.)
) Filed: March 8, 1976
 ATLANTA NEWS AGENCY, INC.; and)
 FAMILY READING SERVICE, INC.,)
)
 Defendants.)

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 defendants, and complains and alleges as follows:

I

JURISDICTION AND VENUE

1. This complaint is filed and these proceedings are 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 violation by the defendants, as hereinafter alleged, of Section 1 of said Act, as amended (15 U.S.C. § 1).

2. Defendant Atlanta News Agency, Inc. maintains offices, transacts business, and is found within the Northern District of Georgia, Atlanta Division.

II

DEFINITIONS

3. As used herein, the term:

- (a) "National distributor" means any person, including a publisher, which sells periodicals

or paperback books to ten or more ID wholesalers for the purpose of resale;

- (b) "Paperback books" means mass media market paperback books;
- (c) "Periodicals" means mass media market paper cover magazines; it excludes daily newspapers but includes tabloids and comic books;
- (d) "Person" means any natural person, association, cooperative, partnership, corporation, or other form of legal entity; and
- (e) "ID wholesaler" means any person engaged in the business of purchasing periodicals and paperback books from the principal national distributors for resale at wholesale rates to retailers, and who itself delivers said merchandise, stocks its customers' display fixtures, bills its customers, credits and removes out of date merchandise and accounts for all sales and returns to its national distributor clients.

III

DEFENDANTS

4. Atlanta News Agency, Inc. (hereinafter "ANA"), an ID wholesaler, is named as a defendant herein. ANA is a corporation organized and existing under the laws of the State of Georgia, with principal offices in Atlanta, Georgia. Said defendant is, and was at the time of the violation hereinafter alleged, engaged in the ID wholesale distribution of periodicals and paperback books primarily in the area surrounding and including Atlanta, Georgia. ANA had total sales of periodicals and paperback books of approximately \$7.5 million for calendar 1972 and approximately \$9.2 million for calendar 1973.

5. Family Reading Service, Inc. (hereinafter "FRS"), an ID wholesaler, is named as a defendant herein. FRS is a corporation organized and existing under the laws of the State of Georgia, with principal offices in Albany, Georgia. During the period of time covered by this complaint said defendant was engaged in the ID wholesale distribution of periodicals and paperback books primarily in the area surrounding and including Albany, Georgia. FRS had total sales of periodicals and paperback books of approximately \$600,000 for calendar 1972 and approximately \$800,000 for calendar 1973.

IV

CO-CONSPIRATORS

6. Various persons, not made defendants herein, participated as co-conspirators in the violation hereinafter alleged and performed acts and made statements in furtherance thereof.

V

TRADE AND COMMERCE

7. The vast majority of periodicals and paperback books sold to readers in Georgia on a single copy (as opposed to subscription) basis are distributed to the retail accounts from which they are ultimately purchased by the reading public by the defendants and seven other ID wholesalers located throughout the State.

8. Each Georgia ID wholesaler maintains a warehouse in its locality for storage of its inventory of periodicals and paperback books. From the thousands of titles shipped or available to it, each Georgia ID wholesaler prepares bundles tailored to the requirements of its customers and delivers said merchandise itself. Each Georgia ID wholesaler stocks

its customers' display fixtures with merchandise, bills its accounts, and credits and removes out-of date merchandise, accounting for all sales and returns to its national distributor clients. Typically, one or more calls per week are made at each account.

9. Many of the periodicals and paperback books purchased for resale by Georgia ID wholesalers, including the defendants, are purchased on a fully returnable basis from national distributors located outside of Georgia. These periodicals and paperback books travel in a continuous and uninterrupted flow of interstate commerce from national distributors located outside of Georgia to Georgia ID wholesalers, to retail accounts and finally to the reading public. The placing of orders and accounting for sales and returns by Georgia ID wholesalers to the various national distributors located outside of Georgia result in a continuous stream of payments, orders, returns, and related paperwork flowing from Georgia to places outside the State, and from places outside the State into Georgia. The ID wholesale distribution of periodicals and paperback books by Georgia ID wholesalers, including the defendants, is within the flow of interstate commerce and has a substantial effect on that commerce.

VI

VIOLATION ALLEGED

10. Beginning sometime after May 1, 1972, and continuing thereafter at least until December, 1973, the exact dates being unknown to the plaintiff, the defendants and co-conspirators engaged in a combination and conspiracy in unreasonable restraint of the aforesaid interstate trade and commerce in violation of Section 1 of the Act of Congress of July 2, 1890, as amended prior to December 21, 1974 (15

U.S.C. § 1), commonly known as the Sherman Act. Unless the relief hereinafter prayed for is granted, the aforesaid combination and conspiracy may recur, and the effects of the aforesaid combination and conspiracy will continue.

11. The aforesaid combination and conspiracy consisted of a continuing agreement, understanding and concert of action among the defendants and co-conspirators, the substantial term of which was to induce and coerce Town & Country News Co., Inc. ("Town & Country"), and its owner, Kendell Morris, of Ailey, Georgia, to refrain from soliciting or doing business in the territories of the defendant companies.

12. In furtherance of the aforesaid combination and conspiracy, the defendants and co-conspirators have done those things which they combined and conspired to do, including entering into contracts with Town & Country, dated October 9, 1973, between ANA and Town & Country, and dated October 19, 1973, between FRS and Town & Country, wherein the parties to the contracts sold to the other party all their business and potential business in specified areas and agreed not to compete with or interfere with the business or potential business of the other party in specified areas.

VII

EFFECTS

13. The aforesaid combination and conspiracy has had, among others, the following effects:

- (a) to allocate territories between ANA and Town & Country and between FRS and Town & Country;
- (b) to restrain and eliminate actual and potential competition between ANA and Town & Country and between FRS and Town & Country in the ID wholesale distribution of periodicals and

paperback books in the areas surrounding and including Atlanta, Albany, and Ailey, Georgia; and

- (c) to deprive readers, retailers, national distributors and publishers of the benefits of actual and potential competition in the ID wholesale distribution of periodicals and paperback books in the areas surrounding and including Atlanta, Albany, and Ailey, Georgia.

PRAYER

WHEREFORE, plaintiff prays:

1. That the Court adjudge and decree that the defendants and co-conspirators have entered into a combination and conspiracy in restraint of the aforesaid interstate trade and commerce in the ID wholesale distribution of periodicals and paperback books in violation of Section 1 of the Sherman Act (15 U.S.C. § 1).

2. That the defendants, their successors, assignees, transferees, officers, directors, agents, and all other persons acting or claiming to act on their behalf, be enjoined and restrained from, in any manner, directly or indirectly, continuing, maintaining or renewing the combination and conspiracy hereinbefore alleged, or from engaging in any other combination, conspiracy, agreement, understanding or concert of action having a similar purpose or effect, and from adopting or following any practice, plan, program or device having a similar purpose or effect.

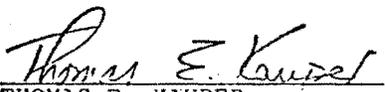
3. That the defendants, their successors, assignees, transferees, officers, directors, agents, and all other persons acting or claiming to act on their behalf be enjoined and restrained from, in any manner, directly or indirectly, entering into, continuing, maintaining or renewing any

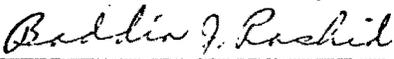
contract, combination, conspiracy, agreement, understanding or concert of action to limit or restrict the territory within which or the customers to which any ID wholesaler, including defendants, may sell periodicals or paperback books including the contracts referred to in paragraph 12 of this complaint.

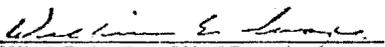
4. That pursuant to Section 5 of the Sherman Act (15 U.S.C. § 5) an order be made and entered herein requiring defendant FRS to be brought before this Court in this proceeding and directing the United States Marshal of the Middle District of Georgia to serve a summons on said defendant.

5. That the plaintiff have such other, further, general and different relief as the case may require, and the Court may deem just and proper.

6. That the plaintiff recover its taxable costs.


THOMAS E. KAUPER
Assistant Attorney General


BADDIA J. RASHID


WILLIAM E. SWOPE

DONALD A. RINKAID

Attorneys,
Department of Justice

JOHN W. STOKES, JR.
United States Attorney

428 Old Post Office Building
56 Forsyth Street, NW
Atlanta, Georgia 30303
Telephone: (404) 526-6954

JOHN R. FITZPATRICK

CARL W. MULLIS, III

Attorneys,
Department of Justice

Antitrust Division
Room 420
1776 Peachtree Street, NW
Atlanta, Georgia 30309
Telephone: (404) 526-3828