

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. Alliance Amusement Company, Fourth Avenue Amusement Company, Grand Theatre Corporation, Terre Haute Amusement, Inc., and Tri-Theatres Corporation., U.S. District Court, S.D. Indiana, 1955 Trade Cases ¶68,142, (Sept. 9, 1955)

United States v. Alliance Amusement Company, Fourth Avenue Amusement Company, Grand Theatre Corporation, Terre Haute Amusement, Inc., and Tri-Theatres Corporation.

1955 Trade Cases ¶68,142. U.S. District Court, S.D. Indiana. Civil Action No. 493. Filed September 9, 1955. Case No. 1124 in the Antitrust Division of the Department of Justice.

Sherman Antitrust Act

Combinations and Conspiracies — Consent Decree — Practices Enjoined — Pooling Agreements—Motion Picture Theatres.—Motion picture exhibitors and their subsidiaries were prohibited by a consent decree from making or continuing to perform pooling agreements whereby given theatres of two or more exhibitors, normally in competition, are operated as a unit, whereby the business policies of such exhibitors are collectively determined by a joint committee or by one of the exhibitors, or whereby profits of the “pooled” theatres are divided among the owners according to prearranged percentages.

Combinations and Conspiracies—Consent Decree—Practices Enjoined—Motion Picture Licensing Agreements—Clearances.—Motion picture exhibitors and their subsidiaries were prohibited by a consent decree from (1) entering into any licensing agreement for first run exhibition of any feature motion picture which provides for clearance in excess of twenty-five days over the second run exhibition of such picture and (2) entering into any licensing agreement for second run exhibition of any feature motion picture which provides for clearance in excess of seven days over the third run exhibition of such picture. The decree further provided that so long as the exhibitors both maintain any interest in a specified drive-in theatre, they are prohibited from exhibiting pictures in that theatre on a first run basis in excess of fifty-six days in any calendar year.

Combinations and Conspiracies—Monopolies—Consent Decree—Practices Enjoined—Joint Ownership of Theatres—Acquisition and Merger of Theatres.—Two motion picture exhibitors and their subsidiaries were prohibited by a consent decree from acquiring or maintaining any beneficial interest in any theatre in conjunction with any other exhibitor; however, after thirty months from the date of the entry of the decree, the defendants could acquire such beneficial interests if they show to the satisfaction of the court that such acquisition will not substantially lessen competition. The defendants were prohibited from acquiring any shares of stock in, or assets of, each other or merging or consolidating one with the other, except after an affirmative showing to the court that, the effect of such acquisition, merger, or consolidation will not be substantially to lessen competition or to tend to create a monopoly in the exhibition of motion pictures. So long as the defendants were both shareholders in specified corporations, they were prohibited from permitting the corporations to acquire any financial or operating interest in any theatre.

Department of Justice Enforcement and Procedure—Consent Decrees—Specific Relief —Sale of Theatre Interest.—A consent decree entered against two motion picture exhibitors and their subsidiaries provided that in the event the defendants should be the owners of a certain interest in a specified theatre, the defendants should offer for sale all their interest in that theatre and sell such interest if a reasonable offer is made. If the Government and the defendants disagree as to whether an offer is reasonable, the matter should be arbitrated (at the cost of the defendants) or presented to the court for its determination. In the event the matter is presented to the court, the burden of proof should be on the defendants to establish that the offer is not a reasonable offer. The decree further provided that until such time as the interest of the defendants in the theatre is sold or their lease on the theatre expires, the defendants can continue to operate the theatre.

Department of Justice Enforcement and Procedure—Consent Decrees—Permissive Provisions—Transactions Between Parent and Subsidiary Companies—Operation of Theatre Concessions.—A

consent decree entered against a motion picture exhibitor and its subsidiaries provided that nothing contained in the decree should be construed to apply to relationships, transactions, or agreements solely between them, so long as the subsidiary companies are directly or indirectly, substantially wholly owned subsidiaries of the parent company. The decree further provided that nothing contained in the decree should prohibit one group of defendants from employing the other group of defendants to manage and operate the business of vending candy, soft drinks, popcorn, confections and like merchandise on the premises of any theatre operated by the first group of defendants.

For the plaintiff: Stanley N. Barnes, Assistant Attorney General; and Victor H. Kramer, William D. Kilgore, Jr., Maurice Silverman, Walter D. Murphy, Charles F. B. McAleer, and George D. Reycraft, Attorneys.

For the defendants: Henry J. Stites for Fourth Avenue Amusement Company and Tri-Theatres Corporation, and Seymour Simon for Alliance Amusement Company, Grand Theatre Corporation, and Terre Haute Amusement, Inc.

Consent Judgment

WILLIAM E. STECKLER, District Judge [*In full text*]: Plaintiff, United States of America, having filed its complaint herein on April 2, 1952; the defendants having appeared and filed their answers to said complaint buying the substantive allegations thereof; and the plaintiff and said defendants, by their respective attorneys, having severally consented to the entry of this Judgment without trial or adjudication of any issue of fact or law herein, and without admission by any party in respect of any such issue.

Now, therefore, before the taking of any testimony and without trial or adjudication of any issue of fact or law herein, and upon consent as aforesaid of all the parties hereto,

It is hereby ordered, adjudged and decreed as follows:

I

[Sherman Act]

This Court has jurisdiction of the subject matter hereof and of all parties hereto. The complaint states a cause of action against the defendants under Sections 1 and 2 of the Act of Congress of July 2, 1890, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," as amended, commonly known as the Sherman Act.

II

[Definitions]

As used in this Judgment:

- (A) "Person" shall mean any individual, partnership, firm, corporation, association, trustee or any other business or legal entity;
- (B) "Terre Haute area" shall mean the area within the corporate limits of Terre Haute, Indiana and an area within a radius of ten (10) miles from the intersection of 7th Street and Wabash Avenue in Terre Haute;
- (C) "Defendants" shall mean Alliance Amusement Company, Fourth Avenue Amusement Company, Grand Theatre Corporation, Terre Haute Amusement, Inc., Tri-Theatres Corporation and each of them;
- (D) "Alliance defendants" shall, mean Alliance Amusement Company, Grand Theatre Corporation, Terre Haute Amusement, Inc., and each of them;
- (E) "Fourth Avenue defendants" shall mean Fourth Avenue Amusement Company, Tri-Theatres Corporation, and each of them;
- (F) "Exhibitor" shall mean any person engaged in the business of Operating one or more motion picture theatres or a person employed by any person engaged in the business of operating one or more motion picture theatres;

provided, however, that in any event "Exhibitor" shall not include any person who is solely an investor or solely an owner of the real estate in which the Indiana, Wabash, Liberty or Grand Theatres in Terre Haute are located, provided no such investor is otherwise an exhibitor.

III

[*Applicability of Judgment*]

The provisions of this Judgment applicable to a defendant, shall apply only to such defendant, its subsidiaries, officers, agents, servants, employees and attorneys and to those persons in active concert or participation with any defendant who receive actual notice of this Judgment by personal service or otherwise.

IV

[*Pooling Agreements*]

Each of the defendants is enjoined and restrained from:

(A) Entering into, performing, adhering to, maintaining or further directly or indirectly, or claiming any rights under any contract, agreement, understanding, plan or program with any other defendant which has as its purpose or effect the continuing or renewing in the Terre Haute area of any provision of either of the two agreements dated February 13, 1951, true and correct copies of which are annexed to the complaint herein as Appendices A and B thereof, which is inconsistent with any provision of this Judgment.

(B) Making or continuing to perform other pooling agreements in the Terre Haute area whereby given theatres of two or more exhibitors normally in competition are operated as a unit or whereby the business policies of such exhibitors are collectively determined by a joint committee or by one of the exhibitors, or whereby profits of the "pooled" theatres are divided among the owners according to prearranged percentages.

V

[*Joint Ownership of Theatres*]

(A) Subject to the provisions of subsections VI (A) and VI (B) and with the exception of the present interest held by the defendants jointly in the East Side Auto Theatre, the Alliance defendants are enjoined and restrained from acquiring or maintaining any beneficial interest, whether in fee, in shares of stock or otherwise, in any theatre in the Terre Haute area in conjunction with any other exhibitor; provided, however, that after thirty (30) months from the date of entry of this Judgment, said defendants may acquire beneficial interests of the type described in this subsection V (A) (other than pooling agreements and other than joint interests with the Fourth Avenue defendants) if they shall first show to the satisfaction of this Court and the Court shall find that such acquisition will not substantially lessen competition in the Terre Haute area.

(B) Subject to the provisions of subsections VI (A) and VI (B) and with the exception of the present interest held by the defendants jointly in the East Side Auto Theatre, the Fourth Avenue defendants are enjoined and restrained from acquiring or maintaining any beneficial interest, whether in fee, in shares of stock or otherwise, in any theatre in the Terre Haute area in conjunction with any other exhibitor; provided, however, that after thirty (30) months from the date of entry of this judgment said defendants may acquire beneficial interests of the type described in this subsection V (B) (other than pooling agreements and other than joint interests with the Alliance defendants) if they shall first show to the satisfaction of this Court and the Court shall find that such acquisition will not substantially lessen competition in the Terre Haute area.

VI

[*Ownership and Acquisition of Theatres*]

(A) Defendants are jointly and severally enjoined and restrained from owning any interest in the State Theatre other than such interest as Vigo Amusement Corporation owned prior to June 26, 1955, and are enjoined and

restrained from renewing the lease of and from acquiring any new or further interest in said theatre other than such interest as Vigo Amusement Corporation owned prior to June 26, 1955.

(B) In the event defendants should be the owners of any interest in the State Theatre of the type permitted by subsection VI (A), they shall forthwith offer for sale all their interest in such theatre and sell such interest if a reasonable offer therefor is made. If the plaintiff and defendants disagree as to whether an offer for such interest in the State Theatre is reasonable, the matter shall either be arbitrated or presented to this Court for its determination. If the matter is submitted for arbitration, the cost of such arbitration shall be borne by the defendants. In the event the matter is presented to the Court, the burden of proof shall be on the defendants to establish that the offer is not a reasonable offer. Until such time as the interest of the defendants in the State Theatre is sold or their lease on such theatre expires, the defendants may continue to operate such theatre jointly.

(C) So long as the Alliance and Fourth Avenue defendants both have or maintain any interest in the East Side Auto Theatre, such defendants are enjoined and restrained from exhibiting pictures in such theatre on a first run basis in excess of fifty-six (56) days in any calendar year.

(D) So long as they are both shareholders in the Wabash Outdoor Theatre Corporation or Vigo Amusement Corporation, the Alliance and Fourth Avenue defendants are jointly and severally enjoined and restrained from permitting said corporations, or either of them, to acquire, or hold after such acquisition, any financial or operating interest in any theatre in the Terre Haute area.

VII

[Acquisition and Mergers Between Defendants]

(A) The Alliance defendants and the Fourth Avenue defendants are enjoined and restrained from acquiring, or holding after such acquisition, directly or indirectly, any shares of stock in or assets of or any other interest in each other, or merging or consolidating one with the other, except after an affirmative showing to this Court, upon reasonable notice to the Attorney General, that the effect of such acquisition, merger or consolidation will not be substantially to lessen competition or to tend to create a monopoly in the exhibition of motion pictures in the Terre Haute area.

(B) Nothing contained in this Judgment shall prevent any of the defendants from acquiring any of the shares of stock of Wabash Outdoor Theatre Corporation or Vigo Amusement Corporation owned by any other defendant, subject, however, to the provisions of subsections VI (A) and VI (B) relating to the State Theatre.

VIII

[Licensing Agreements— Clearances]

Defendants are enjoined and restrained from:

(A) Entering into or adhering to any licensing agreement for first run exhibition of any feature motion picture in the Terre Haute area which provides for clearance in excess of twenty-five (25) days over the second run exhibition of such picture in the Terre Haute area;

(B) Entering into or adhering to any licensing agreement for second run exhibition of any feature motion picture in the Terre Haute area which provides for clearance in excess of seven (7) days over the third run exhibition of such picture in the Terre Haute area.

(C) This Section VIII shall not apply to clearances provided for with respect to pictures for which licensing contracts have been entered into and are in force as of the date of the entry of this Judgment.

IX

[Management of Theatre Concessions]

Nothing contained in this Judgment shall prohibit the Fourth Avenue defendants, if they so elect, from employing the Alliance defendants to manage and operate or otherwise conduct the business of vending candy, soft drinks, confections, popcorn and like merchandise on the premises of any theatre in the Terre Haute area which such Fourth Avenue defendants may operate.

X

[Transactions Between Parent and Subsidiary Companies]

(A) Nothing contained in this Consent Judgment shall be construed to apply to relationships, transactions, or agreements solely between Alliance Amusement Company, Grand Theatre Corporation, and Terre Haute Amusement, Inc., so long as Grand Theatre Corporation and Terre Haute Amusement, Inc. are directly or indirectly substantially wholly owned subsidiaries of Alliance Amusement Company.

(B) Nothing contained in this Consent Judgment shall be construed to apply to relationships, transactions, or agreements solely between Fourth Avenue Amusement Company and Tri-Theatres Corporation, so long as Tri-Theatres Corporation is substantially a wholly owned subsidiary of Fourth Avenue Amusement Company.

XI

[Inspection and Compliance]

For the purpose of securing compliance with this Judgment, duly authorized representatives of the Department of Justice shall, upon written request of the Attorney General, or the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to any defendant, made to its principal office, be permitted: (A) access during the office hours of said defendant to all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of said defendant relating to any matters contained in this Judgment, and (B) subject to the reasonable convenience of said defendant and without restraint or interference from it, to interview officers or employees of said defendant, who may have counsel present, regarding any such matters.

Upon such request the defendant shall submit such reports in writing to the Department of Justice with respect to matters contained in this Judgment as may from time to time be necessary to the enforcement of this Judgment. No information obtained by the means provided in this Section XI shall be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of the Department, except in the course of legal proceedings to which the United States is a party for the purpose of securing compliance with this Judgment, or as otherwise required by law.

XII

[Jurisdiction Retained]

Jurisdiction is retained for the purpose of enabling any of the parties to this Judgment to apply to this Court at any time for such further orders and directions as may be necessary or appropriate for the construction or carrying out of this Judgment, for the modification of any of the provisions thereof, and for the purpose of enforcement of compliance therewith and the punishment of violations thereof.