

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. Schine Chain Theatres, Inc., et al., U.S. District Court, W.D. New York, 1952-1953 Trade Cases ¶¶67,237, (Jan. 22, 1952)

United States v. Schine Chain Theatres, Inc., et al.

1952-1953 Trade Cases ¶¶67,237. U.S. District Court, W.D. New York. Civil Action No. 223. Filed January 22, 1952. Case No. 451 in the Antitrust Division of the Department of Justice.

Sherman Antitrust Act

Consent Decree—Modification of Prior Consent Decree—Time To Dispose of Theatres Extended—Terms and Conditions of Dispositions.—Upon the consent of the parties to an antitrust consent decree, an order is entered to extend the time in which a theatre circuit must dispose of motion picture theatres. In the disposition of the theatres, the theatre circuit is required to notify the public and real estate brokers that no reasonable offer will be refused; forbidden to change the playing policy of any theatre so as to reduce the revenues; forbidden to refuse any offer as unreasonable, if the offer, plus the profits of the particular theatre in question since a certain date would be considered a reasonable offer; forbidden to move up its playing policy of any of its theatres in certain towns, and forbidden to change its policies in such theatres where the change has the effect of adversely affecting the competition of an independent exhibitor; ordered to report in writing to the Department of Justice its progress in carrying out the product limitation provisions of the consent decree; permitted to lease a specified number of theatres in the event that it is not able to sell such theatres after first obtaining Court approval and on specified conditions; and permitted to sublet theatres which are held under a lease where it has used its best efforts to assign the lease and to secure a release from its obligation under such lease on specified conditions.

For the plaintiff: Philip Marcus, Washington, D. C., and George L. Grobe, United States Attorney, Buffalo, N. Y.

For the defendants: Howard M. Antevil, Gloversville, N. Y.

Modifying provisions of a consent decree entered in the U. S. District Court, Western District of New York, 1948-1949 Trade Cases ¶¶ 62,447. For prior opinions in the same case, see 1948-1949 Trade Cases ¶¶ 62,245, 1946-1947 Trade Cases ¶¶ 57,518, 57,478, and 1944-1945 Trade Cases ¶¶ 57,413, 57,310, 57,309.

Order

[*Additional Time Needed to Dispose of Theatres*]

KNIGHT, Chief Judge [*In full text*]: The defendants having represented to the plaintiff and now representing to the Court that they have not sold theatres which they were required to sell by June 24, 1951 under the judgment entered against them on June 24, 1949, as amended by subsequent order, and that they need more time to dispose of these theatres and the other theatres required to be disposed of under said judgment; it appearing that plaintiff has not made a full examination of all the circumstances with respect to alleged difficulties in disposing of said theatres, but it appearing to this Court that if the conditions hereinafter set forth are complied with, competition in Schine towns and the disposition of theatres required to be disposed of will be facilitated.

[*Time To Dispose of Theatres Extended—Terms and Conditions*]

It is therefore hereby ordered and the time for Schine to dispose of theatres as provided for under the judgment is extended until June 24, 1953 under the following terms and conditions:

1. Schine shall dispose of, for motion picture purposes, all of the theatres presently undisposed of (except in Van Wert) no later than June 24, 1953, and shall dispose of at least one-third of such theatres no later than June 24, 1952, and shall dispose of at least two-thirds of such theatres no later than December 24, 1952.
2. Promptly after the entry of this order, defendants shall notify the public and real estate brokers that no reasonable offer will be refused for the theatres.

3. Schine shall not change the playing policy so as to reduce the revenues or otherwise reduce the revenue possibility of any theatre required to be disposed of.
4. Schine shall not refuse any offer as unreasonable, if the offer, plus the profits of the particular theatre in question since June 24, 1951 would be considered a reasonable offer.
5. In the following towns, Auburn, Corning, Geneva, Lockport, Oswego, Water-town, and Wooster, Schine shall not from the date of the judgment entered herein on June 24, 1949 and until June 24, 1953, or during the existence of a product limitation in any of the above towns provided for in pursuance of the judgment entered herein on June 24, 1949, whichever period shall be the longer, move up the playing policy of any of its theatres retained in said towns, and shall not change its policies in such theatres where the change has the effect of adversely affecting the competition of an independent exhibitor. In the event of a dispute as to whether a playing policy has been moved up or a change adversely affecting the competition of an independent exhibitor has taken place, the burden of proof shall be on the defendant to show the contrary.
6. The provisions of Section II.2 of the Judgment entered herein on June 24, 1949 shall continue to be applicable until December 1, 1953 to the towns where such provisions have already been made applicable.
7. Schine shall report in writing to the Department of Justice every six months from the date herein its progress in carrying out the product limitation provisions of the Judgment. The failure of plaintiff to take any action upon receiving such reports shall not be deemed to prejudice plaintiff as to any action or position it may thereafter take in this or any other action. Sections 11.2. a and b is hereby amended to add after "in any fiscal year" the phrase "and during any three months period within such year."
8. As to not exceeding one-half of the theatres presently required to be disposed of, in the event that Schine is unable to sell on reasonable terms its interest therein, Schine, upon application to the Court in any such case, and with the approval of the Court first obtained, may lease the same to a party not a defendant herein or owned or controlled by or affiliated with or related to a defendant herein; on condition, however, that no such lease shall contain any rental provision based upon a share of the profits of the theatre covered by the lease or any other theatre; and further on condition that Schine shall sell its interest in any such theatre so leased as soon thereafter as it can do so upon reasonable terms, and in any event prior to the expiration of such lease.
9. Any of the theatres which Schine is obligated to dispose of which is held under lease may be sublet by Schine in any case where Schine has used its best efforts to assign the lease and to secure a release by its landlord from its obligation under such lease in the event of an assignment of the lease by Schine and the landlord has been unwilling to agree to such a release, on condition that:
 - (a) The subtenant is not a defendant in Equity Cause No. 223 or owned or controlled by or affiliated with or related to a defendant therein;
 - (b) The sublease shall provide for no greater rental than is provided for in the master lease;
 - (c) The sublease is for the entire remainder of the term, less one day, of the master lease;
 - (d) The sublease shall not permit Schine to participate in any way in the operation of the theatre subleased;
 - (e) The sublease may not be forfeited for nonpayment of rent unless the sub tenant is in arrears for more than a month's rent and has failed to reduce the amount of rental by which he is in arrears to a single month within 30 days after having been notified so to do by Schine;
 - (f) The sublease may not be forfeited for failure to keep the premises in repair unless the landlord of Schine has threatened to declare a forfeiture of the master lease on account of such failure and the sub tenant has not remedied the default in accordance with the requirements of the master lease after notification so to do by Schine;
 - (g) Schine shall not renew or exercise any options to renew the master lease;
 - (h) In the event of forfeiture of the sublease, Schine shall either assign the lease or again sublet the theatre within 60 days after such forfeiture;

(i) The sublease shall provide that upon the subtenant securing a lease of the theatre property directly from the landlord of Schine and an agreement on the part of such landlord to cancel the master lease, or upon the purchase by the subtenant of the landlord's interest in the said property, the sublease and the master lease shall each automatically terminate and be of no further force or effect from the date of such automatic termination.