

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. Schine Chain Theatres, Inc., et al., U.S. District Court, W.D. New York, 1948-1949 Trade Cases ¶62,447, 465 F. Supp. 1320, (Jun. 24, 1949)

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

1948-1949 Trade Cases ¶62,447. U.S. District Court, W.D. New York. Civil Action No. 223. June 24, 1949. 465 FSupp 1320

Sherman Antitrust Act

Theatre Operation—Consent Judgment — Practices Enjoined.—In a civil antitrust suit which alleged monopolization of theatre operations, a theatre circuit, its affiliated companies and individual officers consented to a judgment which ordered disposition of forty theatres, laid down conditions under which films were to be bought and licensed, and enjoined practices and the performance of agreements which eliminated independent competition.

In order to create substantial motion picture theatre operating competition, specified properties were ordered to be conveyed to persons who would use them as motion picture theatres. Provision was made for leasing of theatres provided that no covenant based upon a share of the profits of the theatre was included in the lease. The company was enjoined from acquiring any financial or operating interest in additional theatres unless such acquisition would not unreasonably restrain competition.

When buying pictures, the theatre circuit was prohibited from combining open and closed towns to increase its buying power. The number of first-run pictures to be taken by the chain was curtailed to a stipulated percentage of all pictures released. Licenses were ordered to be taken on a single-theatre basis and free of restrictive conditions not available to competitors.

The decree enjoined the following practices: attempting to control the admission price charged by others by agreement with distributors or demands made upon distributors, demanding or receiving any clearance over theatres not in substantial competition, entering into any licensing agreement for more than one picture season and covering the exhibition of pictures released by one distributor during the entire period of agreement, measuring a license fee by a specified percentage of the feature's national gross, operating theatres normally in competition as a unit, enforcing any agreement not to compete or restrict the use of real estate to non-theatrical purposes, preventing a competitor from acquiring or operating a theatre and cutting admission prices to prevent independent competition.

For the plaintiff; Tom G. Clark, Washington, D. C., Attorney General; Herbert O. Bergson, Washington, D. C., Assistant Attorney General; George L. Grobe, Buffalo, N. Y., United States Attorney; Sigmund Timberg, Philip Marcus, Washington, D. C., Special Assistants to the Attorney General.

For the defendants: Irving R. Kaufman, New York, New York; Willard S. McKay, New York, New York; Howard M. Antevil, Gloversville, New York.

Consent Decree as to Schine Defendants

JOHN KNIGHT, District Judge: The plaintiff, the United States of America, having filed its Second Amended Complaint herein, and all the defendants having appeared and severally filed their answers to such complaint, denying the substantive allegations thereof, the Court after trial having entered a decree herein consisting of a judgment dated October 31, 1945, an Amended Judgment dated March 29, 1946, and an Order of Divestiture dated July 2, 1946; the defendants having appealed from such decree; the Supreme Court having in part affirmed and in part reversed such decree, and having remanded this cause to this Court for further proceedings in conformity with its opinion dated May 3, 1948, and this Court having, on August 13, 1948 entered an order vacating certain parts of its decree, findings of facts and conclusion of law, affirming other parts thereof, and providing for further proceedings pursuant to the Mandate and Opinion of the Supreme Court, and no further testimony or evidence having been taken after the remand of this cause; and no decision having been rendered

by this Court after said remand upon the issues to be determined upon said remand, and all parties hereto, by their respective attorneys, having severally consented to the entry of this final judgment without admission by the defendants in respect to any such issue to be determined on remand.

It is hereby Ordered, Adjudged and Decreed:

[*Previous Decree Superseded*]

I

This judgment shall supersede the provisions for relief contained in the previous decrees of this Court.

[*Practices Enjoined*]

II

The Schine defendants, their officers, agents, servants, and employees are each hereby enjoined:

1. From combining open and closed towns in buying pictures for theatres operated by them or any one or more of them.
2. Except for the towns of Amsterdam, N. Y.; Glens Falls; N. Y.; Salisbury, Md.; Buffalo, N. Y.; and Syracuse, N. Y., from licensing for a period of three years from July 1, 1949 (or, in the case of a locality where a theatre is required to be divested pursuant to the provisions of paragraph IV, for a period of three years from the date possession of a theatre in operating condition is taken):
 - a. More than 60% ¹ of the feature films released by the major distributors for first run ² exhibition in any fiscal year, except as to pictures for which competitors who have had an opportunity to request licenses have not made an offer or have made an insubstantial offer; ³ and
 - b. More than 48 ⁴ feature films from among the eighty pictures constituting the aggregate of the ten pictures released by each of the major distributors, respectively, for first run ² exhibition in any fiscal year, which are allocated by the respective distributor to its highest selling bracket or brackets, except as to pictures for which competitors who have had an opportunity to request licenses have not made an offer or have made an insubstantial offer. ³
3. From attempting to control the admission prices charged by others by agreement with distributors, demands made upon distributors, or by any means whatsoever.
4. From demanding or receiving any clearance over' theatres not in substantial competition.
5. From demanding or receiving any clearance over theatres in substantial competition with the theatre receiving the license for exhibition in excess of what is reasonably necessary to protect the licensee in the run granted. Upon request or complaint made by an exhibitor to the Schine defendants, or notice received by the Schine defendants of a request or complaint made to a distributor, that the clearance held by a Schine theatre over his theatre is unreasonable, the defendants agree to procure, from each of the major distributors from whom they license film, a review of the reasonableness of such clearance. Before such review shall be undertaken, written notice shall be given to the exhibitor affected, which notice shall advise such exhibitor that he may present his views orally or in writing to the distributor as to what, if any, clearance he deems reasonable. The defendants also agree, with respect to any complaint of unreasonable clearance, to submit upon request by the complainant the same to arbitration before any impartial arbitrator for determination, and decision of such arbitrator shall be binding upon the parties. Nothing herein shall prejudice the plaintiff or the exhibitor, in any court or arbitration proceeding in which the reasonableness of any clearance is in issue.
6. From asking or knowingly receiving, in the licensing of feature films for any theatre operated by the Schine defendants, discriminatory terms or conditions not available to competitors.

7. From licensing any feature for exhibition upon any run in any theatre in any other manner than that each license shall be offered and taken theatre by theatre, solely upon the merits.
8. From making any franchise agreements. The term "franchise" as used herein means a licensing agreement or series of licensing agreements, entered into as a part of the same transaction, in effect for more than one motion picture season and covering the exhibition of pictures released by one distributor during the entire period of agreement.
9. From making any formula deal or master agreement. The term "formula deal" as used herein means a licensing agreement with a circuit of theatres in which the license fee of a given feature is measured for the theatres covered by the agreement by a specified percentage of the feature's national gross. The term "master agreement" means a licensing agreement, also known as a "blanket deal", covering the exhibition of features in a number of theatres usually comprising a circuit.
10. From conditioning the licensing of films in any competitive situation upon the licensing of films in any other situation.
11. From making or continuing to perform pooling agreements 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 pre-arranged percentages.
12. From enforcing any existing agreements not to compete, or to restrict the use of any real estate to non-theatrical purposes.
13. From using any threats or deception as a means whereby a competitor is induced to sell or is prevented from acquiring or operating a theatre.
14. From buying or booking films for any theatre other than those in which the Schine defendants own a financial interest.
15. From cutting admission prices for the purpose of eliminating or preventing the competition of independent competitors.
16. From continuing any contract, conspiracy, or combination with each other or with any other person which has the purpose or effect of maintaining the exhibition or theatre monopolies of the defendants or of preventing any other theatre or exhibitor from competing with the defendants or any of them, and from entering into any similar contract, conspiracy, or combination for the purpose or with the effect of restraining or monopolizing trade and commerce between the States.

[*Pooling Arrangements Dissolved*]

III

The existing pooling arrangements at Fostoria and Medina, Ohio, and Syracuse, New York, shall be dissolved.

⁵ Such dissolution in Fostoria and Medina may be effected either by dissolution of the respective corporations through which the defendants' theatre interests in these towns are jointly held with non-defendants and return of the theatres involved to the respective stockholders who owned them prior to the formation of the corporation or by a sale of the defendants' stock in such corporations. In the event that said corporations have not been dissolved as outlined above by August 15, 1949, the defendants' stock therein shall be sold to the other parties to the pool or to a party other than a defendant or owned or controlled by or affiliated with or related to defendants.

[*Disposition of Property Ordered*]

IV

A. For the purpose of creating substantial motion picture theatre operating competition in the localities hereinafter listed where the plaintiff claims that no competition or no substantial or adequate competition now exists or did

exist during the years covered by the evidence and findings of fact in this cause, the Schine defendants shall dispose of all of the interest of each or any of the defendants in the following properties to persons who will use them as motion picture theatres⁶ within three years from the date of the entry of this judgment, and shall entertain offers for the purchase of such theatres at any time. As to at least one-third of said properties such disposition shall be completed within one year from such date, and as to at least two-thirds of the said properties such disposition shall be completed within two years from such date. Each such disposition shall be to a party other than a defendant or owned or controlled by or affiliated with or related to a defendant, and shall be subject to the approval of this Court, upon notice to the Attorney General. The Schine defendants are also ordered and directed to comply with the other directions contained in the following tabulation:—

NEW YORK

TOWN	THEATRE
Auburn	Jefferson
Canandaigua	Lake
Carthage	Bank property and former State Theatre property
Corning	State
Cortland	Temple
Geneva	Regent
	Temple, if not in regular operation during the major part of each year.
Herkimer	Richmond
Little Falls	Hippodrome
Lockport	Palace or Rialto
Malone	Plaza
Newark	Crescent
Ogdensburg	Pontiac
Oneonta	Palace or Oneonta
Oswego	Strand
	Capitol, if not in regular operation during the major part of each year.
Perry	Vacant lot
Rochester	Madison or Monroe and Riviera or Liberty
Salamanca	Andrews
Seneca Falls	Seneca
Watertown	Palace

OHIO

Ashland	Palace
Bellefontaine	Strand
Bucyrus	Southern
Delaware	Star
Kent	Opera House
Ravenna	Ohio ⁷
Piqua	Miami or Piqua Bijou, if not re-opened by Schine defendants within three months from entry of judgment and kept in operation during the major part of each year.
Van Wert	Strand
Wooster	Opera House or Wayne or Wooster at buyer's option
Tiffin	Ritz or Tiffin unless the Schine defendants no longer have any interest in, or control over, any theatre in Fostoria.
Mt. Vernon	Vine
Norwalk	Moose

KENTUCKY

TOWN	THEATRE
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Corbin	Kentucky
Lexington	Kentucky or Strand and one other, not the Ada Meade
Maysville	Hollywood
Paris	Bourbon
	MARYLAND
Cambridge	Arcade or State
Easton	Avalon or New Easton ⁹
Cumberland	Liberty
Salisbury	In accordance with the Order of Judge Knight dated October 15, 1948.

B. As to such of the theatres required to be disposed of under this judgment as defendants have been unable to sell on reasonable terms, defendants, upon application to the Court in any such case and with the approval of the Court first obtained, may lease or sublease the same to a party not a defendant herein or owned or controlled by or related to or affiliated with a defendant herein; on condition, however, that no such lease or sublease shall contain any rental provisions based upon a share of the profits of the theatre covered by the lease or any other theatre; and further on condition that defendants shall thereafter sell their interest in any such theatre so leased or subleased as soon thereafter as they can do so upon reasonable terms and in any event prior to the expiration of such lease or sublease. Approval of the Court to lease such theatres shall not be obtained without a prior showing of due diligence on the part of the defendants to sell the theatres.

[*Further Acquisition of Financial or Operating Interest Enjoined*]

V.

A. The Schine defendants are hereby enjoined from acquiring any financial or operating interest in any additional theatres except after an affirmative showing that such acquisition will not unreasonably restrain competition. Such showing shall be made before this Court upon reasonable notice to the Attorney General at Washington, D. C.

B. Nothing herein contained shall be deemed to prevent the Schine defendants from acquiring interests in theatres (other than those required to be disposed of hereunder).

- a. As a substantially equivalent replacement for theatres held or acquired in conformity with this judgment which may be lost through physical destruction or conversion to non-theatrical purposes, or
- b. In renewing leases covering any theatres held or acquired in conformity with this judgment or in acquiring an additional interest in any such theatre under lease, or
- c. As a substantially equivalent replacement for any theatre held or acquired in conforming with this judgment which has been lost through inability to obtain a renewal of the lease thereof upon reasonable terms, if the defendants shall show to the Court and the Court shall find that such acquisition shall not unduly restrain competition.

C. The term "acquisition" or "acquiring", as used in this judgment, shall include, without limitation, construction, or completion of construction, of theatres.

[*For the Purpose of Compliance*]

VI

A. For the purpose of securing compliance with this decree, and for no other purpose, duly authorized representatives of the Department of Justice shall, on written request of the Attorney General or the Assistant Attorney General in charge of antitrust matters, and on notice to any defendant, reasonable as to time and subject matter, made to such defendant at its principal office, and subject to any legally recognized privilege, (1) be permitted reasonable access, during the office hours of such defendant, to all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of such defendant, relating to any of the matters contained in this decree, and that during the times that the plaintiff shall

desire such access, counsel for such defendant may be present, and (2) subject to the reasonable convenience of such defendant, and without restraint or interference from it, be permitted to interview its officers or employees regarding any such matters, at which interview counsel for the officer or employee interviewed and counsel for such defendant company may be present. For the purpose of securing compliance with this judgment any defendant, upon written request of the Attorney General, or an Assistant Attorney General, shall submit such reports with respect to any of the matters contained in this decree as from time to time may be necessary for the purpose of enforcement of this decree.

B. Information obtained pursuant to the provisions of this section shall not be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of the Department of Justice, except in the course of legal proceedings to which the United States is a party, or as otherwise required by law.

[*Jurisdiction Retained*]

VII

Jurisdiction of this cause is retained for the purpose of enabling any of the parties to this consent decree to apply to the Court at any time for such orders or direction as may be necessary or appropriate for the construction, modification, or carrying out of the same, for the enforcement of compliance therewith, and for the punishment of violations thereof, or for other or further relief.

We hereby consent to the foregoing Judgment.

Footnotes

- 1 For towns where defendants shall have two or more theatres and there is first run competition, substitute "two thirds."
- 2 For the City of Rochester, N. Y., substitute "second run" for "first run."
- 3 As to towns where Schine has competitors who desire first run feature films and in which there is a theatre to be divested, this limitation shall take effect not later than July 1, 1952.
- 4 For towns where defendants shall have two or more theatres and there is first run competition, substitute "53."
- 2 For the City of Rochester, N. Y., substitute "second run" for "first run."
- 3 As to towns where Schine has competitors who desire first run feature films and in which there is a theatre to be divested, this limitation shall take effect not later than July 1, 1952.
- 5 The original order of the District Court directing the dissolution of the pool at Syracuse, New York, dated July 5, 1946, has been complied with in a manner approved by the District Court on August 18, 1947.
- 6 The following properties, which the Schine defendants have certified either have never been used for theatre purposes or have not been so used for a long period of time and are not equipped or adaptable for use as such, need not be subject to the requirement of disposition for use as motion picture theatres:

Carthage—Bank property, former State Theatre property

Newark, Crescent Theatre

Perry, Vacant Lot

Seneca Falls, Seneca Theatre.

Piqua, Bijou Theatre

Norwalk, Moose Theatre.