

**UNITED STATES OF AMERICA v. BALABAN & KATZ
CORPORATION, ET AL., DEFENDANTS.**

**IN THE DISTRICT COURT OF THE UNITED STATES FOR
THE NORTHERN DISTRICT OF ILLINOIS, EASTERN
DIVISION:**

In Equity No. 8854.

UNITED STATES OF AMERICA, PETITIONER

VS.

**BALABAN & KATZ CORPORATION, LUBLINER & TRINZ
Theatres, Inc., Balaban Katz Mid-West Theatres Inc.,
Great States Theatres Inc., Paramount Famous Lasky
Corporation, Metro-Goldwyn-Mayer Distributing Cor-
poration, Publix Theatres Corporation, Universal**

Film Exchanges Inc., United Artists Corporation, First National Pictures Inc., Fox Film Corporation, Pathe Exchange Inc., Vitagraph Inc., Columbia Pictures Corporation, Educational Film Exchanges Inc., F. B. O. Pictures Corporation, The Gotham Photo-plays Corporation, Warner Bros. Pictures Inc., Publix Great States Theatres Inc., Paramount-Publix Corporation, Defendants.

FINAL DECREE.

United States of America filed its amended and supplemental petition herein on April 6th, 1932, and each of the defendants having duly appeared by their respective counsel, the United States of America by George E. Q. Johnson, United States Attorney for the Northern District of Illinois, Honorable John Lord O'Brien, The Assistant to the Attorney General, and John Harlan Amen, Special Assistant to the Attorney General, moved the Court for an injunction as prayed in the petition and each of the defendants consented to the entry of this decree without contest and before any testimony had been taken.

WHEREFORE, it is ordered, adjudged and decreed as follows: that

I. The term "affiliated exhibitors" as used herein shall include persons, firms, partnerships or corporations which are engaged in the exhibition of motion pictures at theatres which are owned, operated or controlled, directly or indirectly, by any producer or distributor of motion pictures

II. The term "unaffiliated exhibitors" as used herein shall include persons, firms, partnerships or corporations which are engaged in the exhibition of motion pictures at theatres which are not owned, operated or controlled, directly or indirectly, by any producer or distributor of motion pictures.

III. The Court has jurisdiction of the subject matter hereof and of all persons and parties hereto and the amended and supplemental petition herein states a cause

of action against the defendants under the Act of Congress of July 2, 1890, commonly known as the Sherman Antitrust Act.

IV. The words "concertedly," "concerted," "collusive," "collusively," "collective," "collectively," and "concert or agreement" as used in this decree shall include any mutual agreement, understanding, plan, device or contrivance between any two or more defendants and shall not be construed to include merely simultaneous and/or similar action if shown to have been independently taken on the part of two or more defendants.

V. The conspiracy to restrain and to monopolize interstate trade and commerce in motion picture films described in the amended and supplemental petition herein is hereby declared illegal and in violation of said Act of Congress of July 2, 1890, commonly known as the Sherman Anti-trust Act.

VI. The defendants and each of them, their respective officers, directors, agents, servants, employees and all persons acting or claiming to act on behalf of them or any of them be, and they hereby are, perpetually enjoined and restrained from carrying out, directly or indirectly, expressly or impliedly, by any means whatsoever, the conspiracy described in the amended and supplemental petition herein and from entering into or carrying out, directly or indirectly, expressly or impliedly, any similar conspiracy of like character or effect in the Chicago exchange territory.

VII. The defendants and any two or more of them, when acting as distributors of motion pictures in the Chicago exchange territory in such instance, or the defendants and any two or more of them, when acting as exhibitors of motion pictures in the Chicago exchange territory in such instance, or the defendants and any two or more of them, when one or more is acting both as a distributor and an exhibitor in the Chicago exchange territory in such instance, their respective officers, agents, servants, employees and all persons acting or claiming to act on behalf of them or any of them, be

enjoined from collusively, collectively, or by concert or agreement:

(a) Restricting the course of interstate trade and commerce in motion picture films distributed by defendant distributors for first run exhibitions in the territory served by the Chicago Exchanges and for first and second suburban run exhibitions in the City of Chicago, Illinois, to motion picture theatres managed or booked by any one or more of defendant exhibitors.

(b) Preventing unaffiliated exhibitors of motion pictures in the Chicago Exchange Territory from contracting for or from securing in the course of interstate trade and commerce any motion picture film or films suitable for first run exhibition or first or second suburban run exhibition in any city or town in the territory served by the Chicago Exchanges in which any one of the defendant exhibitors operates or books one or more motion picture theatres.

(c) Restraining unaffiliated exhibitors in the Chicago Exchange Territory from contracting in the course of interstate trade and commerce, for any motion picture or pictures to exhibit and from securing any positive print of any motion picture so contracted for, until such time after the release and prior exhibition of each said motion picture in any theatre operated or booked by any one of defendant exhibitors in said territory that the exhibition value thereof has been lost.

(d) Restraining unaffiliated exhibitors in the Chicago Exchange Territory, which exhibitors do not compete with any motion picture theatre or theatres operated or booked by any one of defendant exhibitors, from contracting in the course of interstate trade and commerce for any motion picture to exhibit first run prior to or at the same time as any first run exhibition of the same motion picture in any motion picture theatre operated or booked by any one of defendant exhibitors, and not in competition with said unaffiliated exhibitor or exhibitors.

(e) Excluding distributors of motion picture films other than defendant distributors from contracting, in the course of interstate trade and commerce to license first run exhibitions of the feature motion pictures distributed by them in first class, first run motion picture theatres in the City of Chicago, Illinois, and in other cities and towns in the Chicago Exchange Territory.

(f) Acquiring the management or booking control, without a substantial proprietary interest therein, of substantially all first class, run motion picture theatres in the City of Chicago, Illinois; acquiring the management or booking control, without a substantial proprietary interest therein, of substantially all first class, first run motion picture theatres in all the principal cities and towns throughout the Chicago Exchange Territory, or acquiring the management or booking control, without a substantial proprietary interest therein, of substantially all first class, first and second suburban run motion picture theatres in the City of Chicago, Illinois.

(g) Granting to motion picture theatres, owned, operated or controlled by defendant exhibitors in the territory served by the Chicago Exchanges, arbitrary or unreasonable protection or clearances over competing theatres owned, operated or controlled by unaffiliated exhibitors.

VIII. The defendant exhibitors and any two or more of them, their respective officers, directors, agents, servants, employees and all persons acting or claiming to act on behalf of them or any of them be enjoined from coercing or compelling or attempting to coerce or compel defendant distributors, their officers, agents or employees with the intent, for the purpose or with the effect of accomplishing the performance of any of the acts enjoined in the foregoing paragraph VII hereof.

IX. The defendants and any two or more of them, when acting as distributors of motion pictures in the Chicago exchange territory in such instance, or the de-

fendants and any two or more of them, when acting as exhibitors of motion pictures in the Chicago exchange territory in such instance, or the defendants and any two or more of them, when one or more is acting both as a distributor and an exhibitor in the Chicago exchange territory in such instance, their respective officers, agents, servants, employees and all persons acting or claiming to act on behalf of them or any of them, be enjoined from preparing, publishing, adopting, enforcing or attempting to enforce any uniform plan, system or schedule of zoning or clearance with the intent, for the purpose or with the effect of accomplishing the performance of any of the acts enjoined in the foregoing paragraph VII hereof.

X. The defendant exhibitors and each of them, and each and all of their respective officers, agents, servants, employees and all other persons, acting or claiming to act on behalf of them or any of them be, and they hereby are, perpetually enjoined and restrained from entering into or performing any contracts, agreements, franchises or licenses with any one or more of the defendant distributors for the exhibition of motion pictures in the territory served by the Chicago exchanges, the individual or collective effect of which will unreasonably lessen competition in interstate trade and commerce between the defendants or any two or more of them, or effect a combination in unreasonable restraint of interstate trade and commerce in motion pictures or create a monopoly of interstate trade and commerce in motion pictures in said territory.

XI. The defendants and any two or more of them, when acting as distributors of motion pictures in the Chicago exchange territory in such instance, or the defendants and any two or more of them, when acting as exhibitors of motion pictures in the Chicago exchange territory in such instance, or the defendants and any two or more of them, when one or more is acting both as a distributor and an exhibitor in the Chicago exchange territory in such instance, their respective officers, agents,

servants, employees and all persons acting or claiming to act on behalf of them or any of them, be and they hereby are perpetually enjoined and restrained from collusively, collectively or by concert or agreement between them, formulating, adopting or practicing a policy either generally or with respect to particular communities:

(a) Whereby the supply of motion pictures distributed by defendant distributors is engrossed for exhibition in theatres owned, operated or controlled by defendant exhibitors in the territory served by the Chicago Exchanges; that is to say, whereby more motion pictures are bought for exhibition by said defendant exhibitors than is reasonably necessary for the proper conduct of their respective businesses in said territory for the purpose or with the intent of preventing competing unaffiliated exhibitors therein from obtaining said motion pictures.

(b) Whereby defendant exhibitors obtain the exclusive first choice of motion pictures distributed by defendant distributors in the territory served by the Chicago Exchanges; that is to say, whereby said defendant exhibitors are permitted to contract for the exhibition of such motion pictures distributed by defendant distributors as they may deem most profitable before the same have been offered to unaffiliated exhibitors in said territory for the purpose or with the intent of preventing said unaffiliated exhibitors from obtaining said motion pictures.

(c) Whereby motion pictures distributed by defendant distributors are leased to unaffiliated exhibitors in said Chicago Exchange Territory only in groups containing a fixed minimum number of such pictures for the purpose or with the effect of restraining competing unaffiliated exhibitors in said territory from leasing such individual motion pictures as they may require and of compelling said unaffiliated exhibitors to contract for the exhibition of more motion pictures distributed by defendant distributors than are needed for the legitimate conduct of their respective businesses.

(d) Whereby defendant distributors leasing feature pictures, news reels and short subjects make it a condition of sale to unaffiliated exhibitors in said Chicago Exchange Territory, that the latter purchase the news reels and/or short subjects, as a condition precedent to obtaining the feature pictures and do not make the same condition of sale to defendant exhibitors, for the purpose or with the intent of restraining competing unaffiliated exhibitors in said territory from leasing such individual motion pictures as they may require and of compelling said competing unaffiliated exhibitors to contract for the exhibition of more motion pictures distributed by defendant distributors than are needed for the legitimate conduct of their respective businesses.

XII. Nothing in this decree contained shall be construed so as to prevent the defendant distributors, acting separately, from entering into and/or carrying out contracts with the defendant exhibitors, acting separately, or to prevent the defendant exhibitors, acting separately, from entering into and/or carrying out contracts with the defendant distributors, acting separately, for motion picture films to be exhibited at theatres maintained and operated by defendant exhibitors; or at theatres for which, the defendant exhibitors contract for motion picture films; or to prevent defendant exhibitors, acting separately, from selecting for exhibition a certain number of motion picture films from the annual product of such distributors, or any of them, before said distributors enter into negotiations or contracts with unaffiliated exhibitors for, or permit unaffiliated exhibitors to select, motion picture films, from time to time, for exhibition purposes; or to prevent defendant exhibitors, acting separately, from entering into contracts for or making selections of motion picture films for exhibition purposes before the time when unaffiliated exhibitors, or any of them, have entered into such contracts or made such selections.

XIII. Nothing in this decree contained shall be construed to declare a classification of theatres according to

the method described in the amended petition as first, second and third or subsequent run or runs theatres, or such other reasonable classification as may hereafter from time to time be in use in the motion picture industry, or zoning of such theatres for clearance and/or protection of motion picture films for exhibition purposes as between theatres, including clearance and/or protection according to runs or price of admission, to be illegal as such or in violation of the Act of Congress of July 2, 1890, entitled "An Act to Protect Trade and Commerce," commonly known as the Sherman Antitrust Act, or as prohibiting any defendant from selecting its own customers and bargaining with them in accordance with law, or as prohibiting defendant distributors and defendant exhibitors from bargaining separately with each other in accordance with law, or any affiliated exhibitor from exhibiting at any time its own films in theatres owned or controlled by it.

XIV. Nothing in this decree contained shall be construed as to prohibiting any lawful conduct by any one or more defendants in the distribution and/or exhibition of motion pictures anything in this decree to the contrary notwithstanding.

XV. For the purposes of this decree, in case any defendant owns the controlling interest in any other defendant or defendants, either directly or indirectly, such defendants (so long as such relationship continues), and/or the respective subsidiaries of any defendant herein, shall be deemed one defendant.

XVI. Jurisdiction of this case be and it hereby is retained for the purpose of enforcing and modifying this decree.

XVII. The Petitioner have and recover from the defendants its costs herein.

ENTER.

Dated, April 6, 1932.

CHARLES E. WOODWARD,
United States District Judge.