

petitioner is entitled to the relief hereinafter granted, and the defendants appearing by their counsel and consenting in open court to the rendition and entry of this decree, now, therefore,

IT IS ORDERED, ADJUDGED AND DECREED, as follows:

I.

DEFINITIONS.

The term "Persons," as used herein, includes individuals, firms, associations, corporations, municipalities and/or governmental agencies.

The term "Poster-Plant," as used herein, means the several billboards, and/or poster-panels (whether built as separate structures or attached to building walls, or otherwise) used for the purpose of showing outdoor advertising posters or lithographs, which are under common ownership and are located in a given city, town, village or other operating area.

The term "Paint-Plant," as used herein, means the several signboards, paint-panels, and/or bulletin-boards (whether built as separate structures or attached to or part of building-walls, or other structures) used for the purpose of having painted thereon designs, slogans, and other outdoor advertising matter, which are under common ownership and are located in a given city, town, village or other operating area.

The term "Display-Plant," as used herein, includes the term "Poster-Plant" and/or "Paint-Plant," as defined herein.

The term "Display-Plant Operator," as used herein, means any person, firm or corporation engaged in the business of owning and operating either a "Poster-Plant" and/or a "Paint-Plant."

The term "General Agency," as used herein, means any person, firm or corporation engaged in the business of soliciting contracts for periodical, newspaper and other forms of advertising, as well as for the display of outdoor advertising matter on display plants.

**UNITED STATES OF AMERICA v. GENERAL OUTDOOR ADVERTISING CO., INC., ET AL.,  
DEFENDANTS.**

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK.

In Equity No. 46-50.

UNITED STATES OF AMERICA, *Petitioner,*

vs.

GENERAL OUTDOOR ADVERTISING Co., INC., NATIONAL OUTDOOR ADVERTISING BUREAU, INC., OUTDOOR ADVERTISING ASSOCIATION OF AMERICA, INC., FOSTER AND KLEISER COMPANY, FOSTER AND KLEISER INVESTMENT COMPANY, KERWIN H. FULTON, GEORGE JOHNSON, GEORGE ARMSBY, individually and as Voting Trustees, and GEORGE W. KLEISER, *Defendants.*

FINAL DECREE.

This cause came on to be heard at this term, and on consideration thereof, and on motion of the petitioner, by Charles H. Tuttle, Esq., United States Attorney, and Horace R. Lamb, Esq., and Breck P. McAllister, Esq., Special Assistants to the Attorney General, of counsel, for relief in accordance with the prayer of the petition, and it appearing to the satisfaction of the court that the

## DECREES AND JUDGMENTS

The term "Solicitor," as used herein, means any person, firm or corporation engaged exclusively in the business of soliciting contracts for the display of outdoor advertising matter on "Display-Plants."

The term "General Company," as used herein, means the General Outdoor Advertising Co., Inc., a corporation organized and existing under and by virtue of the laws of the State of New Jersey, as well as any other corporation which is engaged in the outdoor advertising business, either as a Solicitor or as an Operator of a display plant, either as principal or agent, a majority of the voting stock of which is owned or controlled by the said General Outdoor Advertising Co., Inc., and includes all of its and their and each of their officers, agents, servants, employees, and all persons acting, or claiming to act on behalf of it or them, or any of them.

The term "Bureau", as used herein, means the National Outdoor Advertising Bureau, Inc., a corporation organized and existing under and by virtue of the laws of the State of New York, as well as the advertising agencies owning one or more shares of its stock or holding options to acquire such stock, which agencies are herein-after sometimes referred to as "Bureau Members," and includes all of its and their and each of their officers, agents, servants, employees, and all persons acting, or claiming to act, on behalf of it or them or any of them.

### II.

1. That the petition herein states a cause of action against the defendants under the Act of Congress of July 2nd, 1890, and/or the Act of Congress of October 15, 1914, as amended, and that the Court has jurisdiction of the parties and of the subject matter alleged in the petition.

2. That the contract dated August 24, 1925, a copy of which is annexed to the petition herein and marked Exhibit "A", entered into and now existing between the General Company and the Bureau, be, and the same hereby is, declared illegal and null and void, and that the General Company and the Bureau be, and they hereby are,

perpetually enjoined from directly or indirectly, expressly or impliedly, further carrying out this agreement, or from entering into or performing any similar agreement, or from entering into or performing any agreement or agreements, the intent or effect of which is, or will be, to restrain or monopolize the business of soliciting contracts for outdoor advertising displays, or the execution of such contracts; *provided*, however, (1) that operations under the contract dated August 24, 1925, may be temporarily continued until November 1, 1929, for the purpose of making necessary changes and adjustments in the business operations of the parties, incident to the voiding of the contracts, (2) that any contracts for outdoor advertising displays assigned to the General Company by the Bureau, pursuant to the provisions of the contract dated August 24, 1925, the execution of which shall not have been completed on or before November 1, 1929, shall, on or before said last-mentioned date, be reassigned to the Bureau.

3. That those recitals in which reference is made to the provisions of the said contract dated August 24, 1925, between the General Company and the Bureau (hereinbefore declared illegal and null and void), and the provisions of the several agreements designated "Option to Purchase Stock of the National Outdoor Advertising Bureau, Inc.," entered into by George C. Sherman, Frederick J. Ross, and William C. McJunkin, as trustees for the Bureau and the holders of options to purchase shares of the capital stock of the Bureau (a true copy of the form of which Option Agreement is annexed to the petition herein and marked Exhibit "B"), under which the Bureau is constituted the Bureau members' sole agent for the placing of outdoor advertising contracts, be and they hereby are declared null and void, and the Bureau and its trustees named in the Option Agreement, and each of them, be and they hereby are, perpetually enjoined from carrying out those recitals and provisions of the said option agreements, or from entering into or performing any agreement or agreements under which the Bureau shall be constituted the sole, exclusive agent

of Bureau members for the placing of outdoor advertising.

4. That the Bureau be, and it hereby is, perpetually enjoined from giving or granting any preferences, priority, rebate or discrimination, in any form whatsoever, to, or in favor of, or against, the General Company, or any other person, in connection with any contract or contracts for outdoor advertising displays; or from interfering in any manner whatsoever with the selection of display-plants which have been made by advertisers, Bureau members, or any other persons employing the Bureau's services, in their several contracts for outdoor advertising displays; or from changing, or refusing to comply with, the instructions of such advertisers, members, or other persons, with respect to the selection of the particular display-plant or display-plants on which such contracts are to be executed; *provided*, however, that ~~nothing~~ contained in this paragraph shall prevent the Bureau or any of its representatives from making *bona fide* recommendations to any of its members or other persons employing its services, in response to inquiries from them, or any of them, concerning the merits of a particular display-plant, or from carrying out the instructions of any advertiser, Bureau member, or any other persons employing its services, with respect to modifying, changing or cancelling existing contracts for outdoor advertising displays which have been entered into by such advertisers, Bureau members, or other persons.

5. That the acts hereinafter in this paragraph enjoined would, if performed, violate the Act of Congress of July 2, 1890, or the Act of Congress of October 15, 1914, as amended, and are illegal and therefore the General Company be, and it hereby is, perpetually enjoined and restrained from doing, either directly or indirectly, any or all of, the following acts:

(a) Giving or granting any preference, priority, rebate, or any discrimination (except as provided in subparagraph [f] hereinafter) in any form whatsoever, to, in favor of, or against the Bureau, or any member there-

of, or any person employing the services of the Bureau, or any other person, in connection with any contract or contracts for outdoor advertising displays to be executed in whole or in part on the display-plants owned or operated by the General Company.

(b) Refusing or failing to furnish or to sell advertising space on the display-plants owned or operated by the General Company or refusing or failing to permit the employment of such plants, when space thereon is available for sale or employment, with the intent or the effect of preventing competing solicitors from engaging in the solicitation and/or execution of contracts for outdoor advertising displays; provided however, that nothing herein shall prevent the General Company from refusing to sell advertising space based on *bona fide* compliance with reasonable requirements as to financial responsibility or business ethics.

(c) Requiring, or attempting to require, any person or persons to purchase, or agree to purchase, space on, or to use, or to agree to use, the display-plants of the General Company, or to employ, or to agree to employ, its services, in any place or places where the General Company operates display-plants or furnishes services in competition with competitors, in preference to the display-plants or the services of a competitor, as a condition to the making of a contract with such person or persons for the purchase of space on, or the use of, the display-plants, or any of the display-plants, of the General Company, or the employment of its services.

(d) Requiring or attempting to require as a condition to the acceptance of any contract for an outdoor advertising display to be executed in part on the display plants owned and/or operated by the General Company and in part on display plants owned and/or operated by persons other than the General Company, that the General Company shall sublet the part or parts of such contracts, or any of them, to be executed on the display-plants owned and/or operated by persons other than the General Company; provided, however, that nothing contained in this sub-paragraph (d) shall prevent the Gen-

eral Company from retaining any or all of its property or property rights employed by it in negotiating for a contract for an outdoor advertising display.

(e) Inducing, or attempting to induce, national advertisers, or local representatives of such national advertisers, or solicitors, or general advertising agencies, who may have entered into, or may hereafter enter into, contracts for national outdoor advertising displays in which there has been, or may be, designated display-plants other than the display-plants of the General Company and which contracts have been, or may be assigned to, or placed with, the General Company to be "serviced" or "sub-let" to plant operators other than the General Company, to change the designation in such contracts of the display-plants other than those of the General Company, so that the contracts will provide for execution on the display-plants of the General Company or on display plants other than those originally designated in the contract.

(f) Inducing, or attempting to induce, advertisers not to employ, or to discontinue the employment of, the services of competing solicitors by granting secret rebates, or by entering into any arrangement for the formation of an advertising agency which in fact is a department of the business of an advertiser, or by making discriminations in price or service, where the purpose or the effect thereof is or may be substantially to lessen competition or tend to create a monopoly in the outdoor advertising business; *provided*, however, that nothing herein contained shall prevent discrimination in price between purchasers or users of space or employers of service on account of differences in the grade, quality or quantity thereof, or that makes due allowance for difference in the cost of selling or transportation, or discrimination in price in the same or different communities made in good faith to meet competition; and *provided*, further, that nothing contained in this subparagraph (f) shall prevent the General Company from selecting its own customers in *bona fide* transactions, and not in restraint of the outdoor advertising business.

(g) Knowingly and falsely representing to persons that the quality of the services rendered, or to be rendered, by competitors of the General Company, whether display-plant operators or solicitors, is, or will be, inferior to the quality of the services rendered, or to be rendered, by the General Company, where the purpose or effect thereof is, or will be, to induce such persons not to purchase space on, or to use the display-plants of, or employ the services of, such competitors of the General Company; *provided*, however, that nothing herein shall be construed to prevent the making of *bona fide* representations concerning the merits of the quality of the services rendered, or to be rendered, by the General Company.

(h) Adopting or carrying out a practice, either generally or with respect to any particular community, of interfering with competitors, operators of display-plants, with the purpose or knowingly with the effect of excluding such competitors from carrying on their regular course of business; *provided*, however, that nothing in this sub-paragraph (h) shall be construed to prevent the General Company from making offers for leases or otherwise conducting its business operations in good faith to meet competition.

(i) Acquiring, either directly or indirectly, the ownership or control of any additional display-plant or display-plants (whether now in existence or hereafter to come into existence), either by acquisition of shares of stock, purchase of assets or otherwise, or constructing any additional display-plant or display-plants (except by way of replacement of an existing plant now owned by the General Company), where the purpose of acquiring or constructing such additional display-plant or display-plants is primarily to exclude competitors from engaging in or continuing to engage in the outdoor advertising industry.

6. That the election of defendant George W. Kleiser as a member of the Board of Directors of the General Company be, and it hereby is, declared a violation of

Section 8 of the said Act of Congress of October 15, 1914; and it is ordered that forthwith the said George W. Kleiser resign his office as a director of the said General Company; and it is further ordered that the said George W. Kleiser be, and he hereby is, perpetually enjoined from accepting office as a director of the said General Company while he shall hold office as a director of Foster and Kleiser Company, or of any other corporation with which the General Company is, or may be, in competition in the outdoor advertising business.

7. That within one year from the entry of this decree the defendants Kerwin H. Fulton, George L. Johnson and George Armsby, individually and as voting trustees, be, and they hereby are, ordered and directed to cause the Voting Trust Agreement, dated as of February 26, 1925, referred to in the petition herein, to be terminated; and after the expiration of one year from the entry of this Decree these defendants and each of them, be, and they hereby are, enjoined from further performing this Voting Trust Agreement, either directly or indirectly, or from doing any act pursuant thereto, excepting only the transfer and delivery of certificates representing the shares of common stock in the General Company to such persons as are entitled to receive the same in exchange for voting trust certificates now issued and outstanding.

8. That the terms of this decree shall be binding upon and shall extend to each and every one of the successors in interest of any and/or all of the defendants herein, and to any and all corporations, co-partnerships and/or individuals who may hereafter acquire ownership or control, directly or indirectly, of the stock or of the property, business and good will of any of the corporate defendants, whether by merger, consolidation, reorganization, transfer of assets or otherwise.

9. That the petition herein be and it hereby is dismissed, without prejudice, as to the defendants Outdoor Advertising Association of America, Inc., Foster and Kleiser Company and Foster and Kleiser Investment Company.

10. That jurisdiction of this cause and of the defendants (except as to those defendants against whom the petition is dismissed) be, and it hereby is, retained for the following purposes:

(a) Enforcing this decree;

(b) Enabling the petitioner to apply to the Court for a modification or enlargement of any provisions of this decree, and for other and further relief on the ground that the decree is inadequate; and

(c) Enabling the defendants or any of them to apply for a modification of any provisions of this decree, on the ground that they have become inappropriate or unnecessary.

11. That the petitioner shall recover its taxable costs.

(Signed) JULIAN W. MACK,  
*United States Circuit Judge.*

Dated: New York, May 7, 1929.