

[¶ 68,160] **United States v. Twentieth Century-Fox Film Corporation; Warner Bros. Pictures, Inc.; Warner Bros. Pictures Distributing Corporation; RKO Radio Pictures, Inc.; Republic Pictures Corporation; Republic Productions, Inc.; Columbia Pictures Corporation; Screen Gems, Inc.; Universal Pictures Company, Inc.; United World Films, Inc.; Films, Inc.; and Pictorial Films, Inc.**

In the United States District Court for the Southern District of California, Central Division. Civil Action No. 14354-Y. Dated September 21, 1955.

Case No. 1140 in the Antitrust Division of the Department of Justice.

Sherman Antitrust Act

Department of Justice Enforcement and Procedure—Consent Decrees—Specific Relief—Licensing of Films.—A motion picture distributor was ordered by a consent decree (1) to license or offer for licensing to Government and other outlets its feature films available for 16 mm. exhibition and (2) to license or offer for licensing, for television, its feature films available for television.

See Department of Justice Enforcement and Procedure, Vol. 2, ¶ 8301.50, 8421.

Combinations and Conspiracies—Consent Decree—Practices Enjoined—Refusal To License Films—Restrictive Licensing.—A motion picture distributor was prohibited by a consent decree from (1) refusing to license Government or other outlets to exhibit feature films available for 16 mm. exhibition, (2) restricting licenses for exhibition of any feature film for 16 mm. exhibition by limitations initiated and imposed by it which would have the effect of restraining competition with 35 mm. theatres, or (3) refusing to license for television any feature film available for television. The distributor was further prohibited from entering into any agreement or concerted plan of action with any other defendant in the action to do any of the things which it was enjoined from doing under the decree.

See Combinations and Conspiracies, Vol. 1, ¶ 2005.785.

Department of Justice Enforcement and Procedure—Consent Decrees—Permissive Provisions—Licensing of Films.—A consent decree, which prohibited a motion picture distributor from refusing to license films, and which required the distributor to license films, did not prohibit the distributor from withdrawing films from licensing, refusing to license, restricting licenses, and entering into agreements with third parties under specified conditions.

See Department of Justice Enforcement and Procedure, Vol. 2, ¶ 8321.48.

Department of Justice Enforcement and Procedure—Consent Decrees—Modification.—A consent decree provided that if any final judgment is entered in the action against any defendant other than the consenting defendant and specified other defendants and

such judgment is more favorable to any such other defendant than the instant decree is to the consenting defendant, the consenting defendant is entitled to a modification of the decree to substitute the more favorable provisions for corresponding provisions in the instant decree.

See Department of Justice Enforcement and Procedure, Vol. 2, ¶ 8361.37.

For the plaintiff: Stanley N. Barnes, Assistant Attorney General; W. D. Kilgore, Jr.; James M. McGrath; Samuel Flatow, Special Assistant to the Attorney General; Maurice Silverman, Leonard R. Posner, and Daniel H. Margolis, Trial Attorneys.

For the defendant: Lillick, Geary & McHose, by Robert P. Myers, for Films, Inc.

For prior consent decrees entered in the U. S. District Court, Southern District of California, Central Division, see 1955 Trade Cases ¶ 68,137 and 68,157.

Final Judgment as to Films, Inc.

LEON R. YANKWICH, District Judge [*In full text*]: The United States of America, plaintiff, having filed its complaint herein on July 22, 1952, and having filed an amended complaint on January 20, 1953, and the Court having ordered a further amendment of the complaint on February 9, 1955, and defendant Films, Inc., hereinafter referred to as "said defendant," having appeared and filed its answer to the complaint, as amended, denying the substantive allegations thereof, and the plaintiff and said defendant, by their respective attorneys, having severally consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law herein and without admission 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 the consent of the plaintiff and said defendant, it is hereby ordered, adjudged and decreed as follows:

I

[*Sherman Act*]

The Court has jurisdiction of the subject matter hereof and of the plaintiff and said defendant, and the complaint states a cause of action against said defendant under section 1 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 (15 U. S. C. sec. 1).

II

[*Definitions*]

As used in this Final Judgment:

(a) "Government outlets" means the Armed Forces of the United States, Veterans Hos-

pitals and various other Government agencies, the American Red Cross, and United Services Organization, Inc. (USO):

(b) "Other outlets" means all other places at which 16 mm. feature films can now be exhibited, including but not limited to theatreless towns, hotels, clubs, camps, roadshowmen, drive-in theatres, and merchant-free shows, schools, churches and charitable organizations, hospitals, sanatoria, homes of the aged or disabled and convents, non-profit organizations, prisons or other places of detention, ships, trains and planes, but excluding home exhibitions and television;

(c) "Feature films" means sound motion picture photoplays, four or more reels in length other than motion picture photoplays of strictly educational, religious or commercial character, and not including serial motion pictures;

(d) "Feature films available for 16 mm. exhibition" shall mean feature films with respect to which defendant Films, Inc. shall have the right, by ownership of the copyrights or by license or licenses, and without the authorization or approval of any person, firm, corporation, or in the absence within a reasonable time of the exercise of any such authorization or approval, to license the same for 16 mm. exhibition in both Government and other outlets;

(e) "Feature films available for television" shall mean feature films which defendant Films, Inc. shall have the right, by ownership of the copyrights, or by license or licenses, and without the authorization or approval of any other person, firm, or corporation, or in the absence within a reasonable time of the exercise of any such authorization or approval, to license for exhibition on or by means of television.

III

[Applicability of Judgment]

The provisions of this Final Judgment applicable to said defendant shall apply to such defendant, each officer, director, agent, employee, successor, assignee, and to any other person acting under, through, or for such defendant.

IV

[Licensing of Films Ordered]

Said defendant is ordered and directed to license or offer for licensing in good faith, directly or through distributors, to Government and other outlets its feature films available for 16 mm. exhibition.

V

[Refusal To License Films Prohibited]

Said defendant is enjoined and restrained from

(a) refusing to license or offer to license Government or other outlets to exhibit feature films available for 16 mm. exhibition, and

(b) restricting licenses for exhibition of any feature films for 16mm. exhibition by limitations initiated and imposed by it which would have the effect of restraining competition with 35 mm. theatres, subject, however, to Paragraph VIII hereof.

Nothing in paragraphs IV and V of this Final Judgment shall be construed to prevent said defendant from

(1) withdrawing from licensing or refusing to offer to license to either Government or other outlets, or both, any feature film available for 16 mm. exhibition after it has been licensed or offered for license to 16 mm. outlets (other than Government outlets) for a period of three years;

(2) failing or refusing to license the 16 mm. exhibition of any feature film or films available for 16 mm. exhibition to any particular 16 mm. exhibitor because of the inability in good faith to agree with said executor on the film rental or other terms and conditions of license of such feature film or films not inconsistent with the provisions of the preceding subdivision (b) of this paragraph V, or because said defendant in good faith determines it would be inconsistent with its best business interests to license said exhibitor on account of said exhibitor's character, reputation or credit rating;

(3) restricting or limiting the conditions on which licenses for exhibition of feature films available for 16 mm. exhibition may be granted to schools, churches and charitable organizations, hospitals, sanatoria, homes of the aged or disabled and convents, non-profit organizations, prisons or other places of detention, in consideration of special reduced film rentals to be paid for such licenses;

(4) entering into agreements with any Government outlet in the form customarily employed by such Government outlet for the licensing of 16 mm. feature films;

(5) entering into agreements with third parties granting to them the right or license to distribute and license for exhibition at any one or more of the Government or other outlets any or all feature films available for 16 mm. exhibition provided the provisions of such agreements are not inconsistent with the provisions of paragraph IV and V of this Final Judgment.

VI

[Licensing of Films for TV Ordered]

Said defendant is ordered and directed within 90 days from the date of the entry of this Final Judgment, to license or offer for licensing in good faith, directly or through distributors, for television, its feature films available for television.

VII

[Refusal To License Films for TV Prohibited]

Said defendant is enjoined and restrained from refusing to license or offer for licensing for television in the United States any feature film available for television.

Nothing in paragraph VI or VII of this Final Judgment shall be construed to prevent said defendant from:

(a) withdrawing from licensing or refusing to offer for licensing for television any feature film available for television after it has been licensed or offered for licensing for television for a period of at least three years;

(b) failing or refusing to license for television any feature film or films available for television to any particular licensee or proposed licensee because of the inability in good faith to agree with said licensee or proposed licensee on the license fee or other terms and conditions of license of such

feature film or films, or because said defendant in good faith determines it would be inconsistent with its best business interests to license said licensee or proposed licensee on account of said licensee's or proposed licensee's character reputation or credit rating;

(c) entering into agreements with third parties granting to them the right or license to distribute and license for television any or all feature films available for television provided the provisions of such agreements are not inconsistent with the provisions of paragraphs VI and VII of this Final Judgment.

VIII

[Agreements Prohibited—Modification]

Said defendant is enjoined and restrained from entering into, maintaining or furthering, or claiming any right under any contract, agreement, combination, conspiracy or concerted plan of action with any other defendant or alleged co-conspirator in this action to do any of the things which said defendant is enjoined or restrained from doing pursuant to paragraphs V and VII hereof. Nothing in this Paragraph VIII of this Final Judgment shall be construed to prevent defendant Films, Inc. from accepting a limited or restricted license from any person, firm, or corporation, or to continue existing distribution agreements between the said defendant and Twentieth Century-Fox Film Corporation and Warner Bros. Pictures Distributing Corporation, provided, however, that said defendant may not be a party to any license hereafter granted (other than the extension or renewal of the distribution agreement with Twentieth Century-Fox Film Corporation which extension or renewal has been executed by said defendant), containing a restriction or limitation which is or hereafter may be prohibited by a final judgment entered in this case against any other defendant, or continue any restriction or limitation prohibited by any final judgment hereafter entered with respect to Twentieth Century-Fox Film Corporation or Warner Bros. Pictures Inc. or Warner Bros. Pictures Distributing Corporation.

If any judgment hereafter entered herein by this court should be more favorable to the defendant Warner Bros. Pictures, Inc. with respect to the distributing agreement pursuant to which said defendant has the right to license 16 mm. films produced by Warner Bros. Pictures, Inc., than this judg-

ment is to said defendant, then said defendant shall have the right to apply to this court, upon reasonable notice to the plaintiff, for a modification of this judgment to permit the execution of an extension or renewal of said distributing agreement, in the event said agreement is about to expire prior to the entry of a final judgment herein affecting said distributing agreement.

IX

[Modification]

If any Final Judgment entered or hereafter entered in this case with respect to any defendant or defendants other than Films, Inc., Republic Pictures Corporation, Republic Productions, Inc., or Pictorial Films, Inc. and with respect to Warner Bros. Pictures Distributing Corporation, other than a judgment containing no injunctive relief, should be more favorable in any respect to such other defendant or defendants than this Final Judgment is to this defendant, then this defendant, Films, Inc. shall be entitled on application to this Court, with thirty days notice thereof to the plaintiff, to a modification of this Final Judgment to substitute herein such more favorable provision or provisions for the corresponding provision or provisions included in this Final Judgment, and the plaintiff hereby waives any objection to such application and consents to such modification, and will cooperate, upon the request of said defendant, in obtaining a suitable order pursuant to such application.

X

[Inspection and Compliance]

For purpose of securing compliance with this Final Judgment, duly authorized representatives of the Department of Justice shall, on the written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to the principal office of said defendant, be permitted access during the business or 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 such defendant relating to the matters contained in this Final Judgment and subject to the reasonable convenience of such defendant, and without restraint or interference from such defendant to interview officers or employees of

such defendant, who may have counsel present, regarding any such matters, and upon written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, and upon reasonable notice to its principal office, such defendant shall submit such written reports with respect to any such matters as may from time to time be necessary for the enforcement of this Final Judgment; provided, however, that information obtained by the means permitted in 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 for the purpose of securing compliance with this Final Judgment or as otherwise required by law.

XI

[Jurisdiction Retained]

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