

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	No.
)	
v.)	<u>FINAL JUDGMENT</u>
)	
THE WALT DISNEY COMPANY,)	
)	
Defendant.)	
)	

WHEREAS, plaintiff, the United States of America, having filed its Complaint herewith, and plaintiff and defendant, by their respective attorneys, having consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law herein, and without this Final Judgment constituting any evidence against or an admission by any party with respect to any issue of law or fact herein;

AND WHEREAS, defendant has agreed to be bound by the provisions of this Final Judgment pending its approval by the Court;

AND WHEREAS, prompt and certain divestiture of certain assets to assure that competition is not substantially lessened is the essence of this agreement;

AND WHEREAS, defendant has agreed to make certain divestitures for the purpose of maintaining competition between

KCAL-TV and KABC-TV and between each of them and the other firms against which they compete;

AND WHEREAS, defendant has represented to plaintiff that the divestiture required below can and will be made and that defendant will later raise no claims of hardship or difficulty as grounds for asking the Court to modify any of the divestiture provisions contained below;

NOW, THEREFORE, before the taking of any testimony, and without trial or adjudication of any issue of fact or law herein, and upon consent of the parties hereto, it is hereby ORDERED, ADJUDGED, AND DECREED as follows:

I. JURISDICTION

This Court has jurisdiction over each of the parties hereto and the subject matter of this action. The Complaint states a claim upon which relief may be granted against defendant under Section 7 of the Clayton Act, as amended (15 U.S.C. § 18).

II. DEFINITIONS

As used in this Final Judgment:

A. "Disney" means defendant The Walt Disney Company, a Delaware corporation with its headquarters in Burbank, California, and includes its successors and assigns, and its subsidiaries, directors, officers, managers, agents, and employees.

B. "KCAL-TV Assets" means all of the assets, tangible or intangible, used in the operation of KCAL-TV, including but not limited to: all real property (owned and leased) used in the operation of KCAL-TV; all broadcast equipment, personal property, inventory, office furniture, fixed assets and fixtures, materials, supplies and other tangible property used in the operation of KCAL-TV; all licenses, permits and authorizations and applications therefor issued by the Federal Communications Commission (the "FCC") and other governmental agencies relating to KCAL-TV; all contracts, agreements, leases and commitments of Disney pertaining to KCAL-TV and its operations; all trademarks, service marks, trade names, copyrights, patents, slogans, programming materials and promotional materials relating to KCAL-TV; and all logs and other records maintained by Disney or KCAL-TV in connection with the station's business.

C. "KABC-TV" means the broadcast television station acquired by Disney from ABC Holding Company, Inc., a wholly owned subsidiary of Capital Cities/ABC, Inc., which operates in the Los Angeles, California DMA.

III. APPLICABILITY

The provisions of this Final Judgment apply to the defendant, its successors and assigns, its subsidiaries, directors, officers, managers, agents, and employees, and all other persons in active concert or participation with any of them

who shall have received actual notice of this Final Judgment by personal service or otherwise.

IV. DIVESTITURE BY TRUSTEE

A. The Court will appoint a trustee, who shall take steps to effect the divestiture of the KCAL-TV Assets at the earliest possible time to a purchaser acceptable to plaintiff. Unless plaintiff otherwise consents in writing, the divestiture shall be accomplished in such a way as to satisfy plaintiff, in its sole discretion, that the KCAL-TV Assets can and will be used by the purchaser as a viable, ongoing business. The divestiture shall be made to a purchaser for whom it is demonstrated to plaintiff's satisfaction that the purchaser has the managerial, operational, and financial capability to compete effectively, and that none of the terms of the divestiture agreement interfere with the ability of the purchaser to compete effectively.

B. Within fifteen (15) calendar days of the filing of this Final Judgment, defendant shall provide plaintiff with written nominations setting forth the names and qualifications of not more than three (3) nominees for the position of trustee for the required divestiture. If any of these nominees are acceptable to plaintiff, plaintiff shall notify the Court of the person selected and the Court shall appoint that person as the trustee. If none of the three such nominees is acceptable to plaintiff, plaintiff shall furnish to defendant, within five days after defendant provides the names of its nominees, the names and

qualifications of not more than three (3) nominees for the position of trustee for the required divestiture. Each such nominee proposed by plaintiff shall be a business broker or investment adviser with experience and expertise in the disposition of broadcast properties. Within five days after plaintiff provides the names of these proposed nominees to defendant, defendant shall notify the Court of its selection of one such nominee to be trustee and the Court shall appoint that person as the trustee.

C. After the trustee's appointment has become effective, only the trustee shall have the right to sell the KCAL-TV Assets. The trustee shall have the ability to hire at the cost and expense of defendant any investment bankers, attorneys, or other agents reasonably necessary in the judgment of the trustee to assist in the divestiture, and such professionals or agents shall be solely accountable to the trustee. The trustee shall have the power and authority to accomplish the divestiture at the earliest possible time to a purchaser acceptable to plaintiff, and shall have such other powers as this Court shall deem appropriate. Defendant shall not object to the sale of the KCAL-TV Assets by the trustee on any grounds other than the trustee's malfeasance. Any such objection by defendant must be conveyed in writing to plaintiff and the trustee no later than fifteen (15) calendar days after the trustee has notified defendant of the proposed sale in accordance with Section V of this Final Judgment.

D. The trustee shall serve at the cost and expense of defendant, shall receive compensation based on a fee arrangement which provides incentives based on the speed with which the sale is accomplished and the net proceeds obtained from the sale after payment of all expenses, including of any investment bankers, attorneys, or other agents retained by trustee under its authority in Section IV(C) above, and shall serve on such other terms and conditions as the Court may prescribe; provided however, that the trustee shall receive no compensation, nor incur any costs or expenses (other than related to the selection process), prior to the effective date of his or her appointment. The trustee shall account for all monies derived. After approval by the Court of the trustee's accounting, including fees for its services, all remaining monies shall be paid to defendant and the trustee's services shall then be terminated.

E. Defendant shall take no action to interfere with or impede the trustee's accomplishment of the divestiture of the KCAL-TV Assets and shall use its best efforts to assist the trustee in accomplishing the required divestiture, including best efforts to effect all necessary regulatory approvals. Subject to a customary confidentiality agreement, the trustee shall have full and complete access to the personnel, books, records, and facilities related to the KCAL-TV Assets, and defendant shall develop such financial or other information as may be necessary to the divestiture of the KCAL-TV Assets. Defendant shall permit prospective purchasers of the KCAL-TV Assets to have access to

personnel and to make such inspection of physical facilities and any and all financial, operational, or other documents and information as may be relevant to the divestiture required by this Final Judgment.

F. After its appointment becomes effective, the trustee shall file monthly reports with the parties and the Court setting forth the trustee's efforts to accomplish divestiture of the KCAL-TV Assets as contemplated under this Final Judgment; provided, however, that to the extent such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the Court. Such reports shall include the name, address, and telephone number of each person who, during the preceding month, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the KCAL-TV Assets, and shall describe in detail each contact with any such person during that period. The trustee shall maintain full records of all efforts made to divest these operations.

G. Within six (6) months after its appointment has become effective, if the trustee has not accomplished the divestiture required by Section IV of this Final Judgment, the trustee shall promptly file with the Court a report setting forth (1) the trustee's efforts to accomplish the required divestiture, (2) the reasons, in the trustee's judgment, why the required divestiture has not been accomplished, and (3) the trustee's

recommendations; provided, however, that to the extent such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the Court. The trustee shall at the same time furnish such reports to the parties, who shall each have the right to be heard and to make additional recommendations. The Court shall thereafter enter such orders as it shall deem appropriate, which shall, if necessary, include extending the term of the trustee's appointment.

H. The trustee shall not, without receiving the prior approval of the FCC, directly or indirectly control, supervise, direct or attempt to control the operations of KCAL-TV. Absent receipt of FCC approval to transfer or assign the FCC licenses of KCAL-TV, such operations, including complete control and supervision of all of the programs, employees, finances, operations and policies of KCAL-TV, shall remain solely the responsibility of defendant, subject to its obligations set forth in Section VII hereof.

V. NOTIFICATION

Within two (2) business days following execution of a definitive agreement, contingent upon compliance with the terms of this Final Judgment, to effect, in whole or in part, any proposed divestiture pursuant to Section IV of this Final Judgment, the trustee shall notify plaintiff and defendant of the proposed divestiture. The notice shall set forth the details of

the proposed transaction and list the name, address, and telephone number of each person not previously identified who offered to, or expressed an interest in or desire to, acquire any ownership interest in the assets that are the subject of the binding contract, together with full details of same. Within fifteen (15) calendar days of receipt by plaintiff of such notice, plaintiff may request additional information concerning the proposed divestiture and the proposed purchaser. Defendant and the trustee shall furnish any additional information requested within twenty (20) calendar days of the receipt of the request, unless the parties shall otherwise agree. Within thirty (30) calendar days after receipt of the notice or within twenty (20) calendar days after plaintiff has been provided the additional information requested (including any additional information requested of persons other than defendant or the trustee), whichever is later, plaintiff shall provide written notice to defendant and the trustee, stating whether or not it objects to the proposed divestiture. If plaintiff provides written notice to defendant and the trustee that it does not object, then the divestiture may be consummated, subject only to defendant's limited right to object to the sale under the provisions in Section IV(C). Absent written notice that the plaintiff does not object to the proposed purchaser, a divestiture proposed under Section IV shall not be consummated. Upon objection by plaintiff, a divestiture proposed under Section IV shall not be consummated. Upon objection by plaintiff or by

defendant under the proviso in Section IV(C), a divestiture proposed under Section IV shall not be consummated unless approved by the Court.

VI. AFFIDAVITS

Immediately upon the appointment of the trustee, defendant shall deliver to plaintiff and the trustee an affidavit specifying the name, address, and telephone number of each person who made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the KCAL-TV Assets, and shall describe in detail each contact between defendant and any such person.

VII. PRESERVATION OF ASSETS

Until the divestiture required by the Final Judgment has been accomplished:

A. Defendant shall preserve, hold, and continue to operate the businesses of KCAL-TV and KABC-TV as going businesses, with their assets, management, and operations separate, distinct, and apart from one another. Defendant shall maintain the businesses of KCAL-TV and KABC-TV as viable and active competitors.

B. Defendant shall not coordinate the marketing, promotion, merchandising or terms of sale of advertising time on KCAL-TV with KABC-TV. There shall be no communications between KCAL-TV and KABC-TV relating to any confidential business information, including any marketing, sales, pricing or rate information

pertaining to the sale of advertising time on television stations in the Los Angeles DMA.

C. Defendant shall use all reasonable efforts to maintain and increase sales of advertising time on KCAL-TV. In particular, defendant shall, consistent with market conditions, provide promotional, marketing and merchandising support for the sale of advertising time on KCAL-TV, including expenditures designed to promote particular programming broadcast on KCAL-TV.

D. Defendant shall assure that KCAL-TV and KABC-TV have separate directors, officers, and employees, and ensure that the directors, officers and employees of KCAL-TV, or anyone acting at their direction, do not influence or attempt to influence, directly or indirectly, any operational, programming, marketing or financial decisions of KABC-TV, and vice versa.

E. Except in the ordinary course of business or as part of the disposition of KCAL-TV, defendant shall not, without the prior consent of plaintiff, sell, lease, assign, transfer, or otherwise dispose of, or pledge for collateral for loans (except such loans and credit facilities as are currently outstanding or replacements or substitutes therefore), the business assets of KCAL-TV or KABC-TV, including but not limited to the real estate, facilities, and equipment, and all administrative, marketing, sales and support facilities, used in connection with the sale of advertising time on television stations in the Los Angeles DMA.

F. Defendant shall provide and maintain sufficient working capital, consistent with past practice, to maintain the assets of KCAL-TV and KABC-TV as viable, ongoing businesses.

G. Defendant shall provide and maintain sufficient lines and sources of credit, consistent with past practice, to maintain the general business operations of KCAL-TV and KABC-TV as viable, ongoing businesses.

H. Consistent with the stations' existing practices, defendant shall maintain, in accordance with sound accounting practices, separate, true and complete financial ledgers, books and records reporting the profits and losses of KCAL-TV and KABC-TV on a monthly and quarterly basis.

I. Defendant shall refrain from taking any action designed to reduce the scope or level of competition between the general business operations of KCAL-TV and KABC-TV, or in the sale of advertising time on television stations in the Los Angeles DMA, without the prior consent of plaintiff.

J. Defendant shall refrain from taking any action designed to jeopardize its ability to divest KCAL-TV as a viable going concern.

K. Defendant shall give five business days prior notice to plaintiff of its decision to terminate any KCAL-TV management or sales employee, except in the ordinary course of business.

VIII. COMPLIANCE INSPECTION

Only for the purposes of determining or securing compliance with the Final Judgment and subject to any legally recognized privilege, from time to time:

A. Duly authorized representatives of the United States Department of Justice, upon written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to defendant made to its principal offices, shall be permitted:

(1) Access during office hours of defendant to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of defendant, who

may have counsel present, relating to enforcement of this Final Judgment; and

(2) Subject to the reasonable convenience of defendant and without restraint or interference from it, to interview officers, employees, and agents of defendant, who may have counsel present, regarding any such matters.

B. Upon the written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division, made to defendant's principal office, defendant shall submit such written reports, under oath if requested, with respect to enforcement of this Final Judgment.

C. No information or documents obtained by the means provided in this Section VIII shall be divulged by plaintiff to

any person other than a duly authorized representative of the Executive Branch of the United States, except in the course of legal proceedings to which the United States is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If at the time information or documents are furnished by defendant to plaintiff, defendant represents and identifies in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and defendant marks each pertinent page of such material, "Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure," then ten (10) calendar days notice shall be given by plaintiff to defendant prior to divulging such material in any legal proceeding (other than a grand jury proceeding).

IX. RETENTION OF JURISDICTION

Jurisdiction is retained by this Court 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 or carrying out of this Final Judgment, for the modification of any of the provisions hereof, for the enforcement of compliance herewith, and for the punishment of any violations hereof.

X. TERMINATION

Unless this Court grants an extension, this Final Judgment will expire upon the tenth anniversary of the date of its entry.

XI. PUBLIC INTEREST

Entry of this Final Judgment is in the public interest.

Dated: _____

United States District Judge