

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF WEST VIRGINIA
CHARLESTON DIVISION

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	Civil Action No. 2:07-0329
v.)	
)	Judge Copenhaver
)	
DAILY GAZETTE COMPANY,)	Magistrate Judge Stanley
)	
and)	Filed: February 25, 2010
)	
MEDIANEWS GROUP, INC.,)	
)	
Defendants.)	
)	

[PROPOSED] FINAL JUDGMENT

WHEREAS, Plaintiff, United States of America, filed its Complaint on May 22, 2007, the United States and Defendants, Daily Gazette Company and MediaNews Group, Inc., by their respective attorneys, have consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law, and without this Final Judgment constituting any evidence against or admission by any party regarding any issue of fact or law;

AND WHEREAS, Defendants agree to be bound by the provisions of this Final Judgment pending its approval by the Court;

AND WHEREAS, the essence of this Final Judgment is the prompt adoption of certain procedures and prohibitions by Defendants to assure that competition is not substantially lessened;

AND WHEREAS, the United States requires Defendants to agree to certain procedures and prohibitions for the purpose of remedying the loss of competition alleged in the Complaint;

AND WHEREAS, Defendants have represented to the United States that the actions required below can and will be made and that Defendants will later raise no claim of hardship or difficulty as grounds for asking the Court to modify any of the provisions contained below;

NOW THEREFORE, before any testimony is taken, without trial or adjudication of any issue of fact or law, and upon consent of the parties, it is ORDERED, ADJUDGED AND DECREED:

I. Jurisdiction

This Court has jurisdiction over the subject matter of and each of the parties to this action. The Complaint states a claim upon which relief may be granted against Defendants under Section 7 of the Clayton Act, as amended (15 U.S.C. § 18), and Sections 1 and 2 of the Sherman Act, as amended (15 U.S.C. §§ 1 & 2).

II. Definitions

As used in this Final Judgment:

A. “*Charleston Daily Mail*” means the Daily Newspaper of that name distributed in the Charleston, West Virginia Area.

B. “*Charleston Gazette*” means the Daily Newspaper of that name distributed in the Charleston, West Virginia Area.

C. “Charleston Newspapers” means the unincorporated joint venture operating under the laws of West Virginia, with its principal place of business in Charleston, West Virginia, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and their shareholders, directors, officers, managers, agents, and employees.

D. “Charleston Newspapers Holdings, L.P.” means the Delaware Limited Partnership

formed on May 7, 2004.

E. "Charleston, West Virginia Area" means Kanawha and Putnam Counties in West Virginia.

F. "Daily Newspaper" means a print publication which is published no fewer than five days per week and in which a substantial portion of the content is devoted to the dissemination of news and editorial opinion.

G. "Editorial Content" means the news, feature, and opinion content of, and the format, dress, makeup, and design of, a Daily Newspaper.

H. "Failing Firm" means a firm that has satisfied all of the conditions stated in the U.S. Department of Justice and Federal Trade Commission Horizontal Merger Guidelines as applied by the Department of Justice and/or federal courts to newspapers published in a joint operating agreement under the Newspaper Preservation Act, 15 U.S.C. §§ 1801-1804.

I. "Final Judgment" includes the following agreements attached as Exhibit A: Amended and Restated Limited Partnership Agreement for Charleston Newspapers Holdings L.P.; Amended and Restated Operating Agreement of Daily Gazette Holding Company, LLC; Second Amended and Restated Joint Operating Agreement; the Put/Call Agreement; and the Charleston Newspapers Holdings L.P. Warrant to Purchase Class B Limited Partnership Units Initially Constituting a 20% Percentage Interest.

J. "Gazette Company" means defendant Daily Gazette Company, a privately-held corporation organized and existing under the laws of the State of West Virginia, with its principal place of business in Charleston, West Virginia, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and their shareholders, directors, officers, managers, agents, and employees. Without limiting the foregoing, Gazette Company shall

include Charleston Newspapers.

K. "Intellectual Property of the *Charleston Daily Mail*" includes the masthead, trademarks, copyrights, trade names, service names and service marks of the *Charleston Daily Mail*; its subscriber lists and advertiser lists; print and electronic archives; associated web sites and URLs (including "dailymail.com"); and all legal rights associated with these assets.

L. "MediaNews Group" means defendant MediaNews Group, Inc., now known as Affiliated Media, Inc., a corporation organized and existing under the laws of the State of Delaware, with its principal place of business in Denver, Colorado, its successors and assigns, and their shareholders, subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and their directors, officers, managers, agents, and employees. Without limiting the foregoing, MediaNews Group shall include Charleston Publishing Company.

M. "Person" means any natural person, corporate entity, partnership, joint venture, association, government entity, trust, or other business or legal entity, whether private or governmental.

N. "Publication" means all activities associated with the business of offering a Daily Newspaper to the public as a commercial endeavor, including but not limited to, editing, writing, printing, circulating, operating, marketing, and distributing such Daily Newspapers and selling advertisements and promotions therein.

O. "Relating to" or "Relates to" means in whole or in part constituting, containing, concerning, discussing, describing, analyzing, identifying, or stating.

P. "United States" means the Department of Justice, Antitrust Division.

Q. The terms "and" and "or" have both conjunctive and disjunctive meanings.

III. Applicability

This Final Judgment applies to Gazette Company and MediaNews Group, as defined above, and all other persons in active concert or participation with any of them who receive actual notice of this Final Judgment by personal service or otherwise.

IV. Required And Prohibited Conduct

A. (1) Within 5 business days after the entry of this Final Judgment, Gazette Company and MediaNews Group shall enter into, and abide by the terms of, the Amended and Restated Limited Partnership Agreement for Charleston Newspapers Holdings L.P.; the Amended and Restated Operating Agreement of Daily Gazette Holding Company, LLC; the Second Amended and Restated Joint Operating Agreement; the Put/Call Agreement; and the Charleston Newspapers Holdings L.P. Warrant to Purchase Class B Limited Partnership Units Initially Constituting a 20% Percentage Interest, which are incorporated into this Final Judgment and attached hereto as Exhibit A. Gazette Company and MediaNews Group shall operate Charleston Newspapers, Charleston Newspapers Holdings L.P., the *Charleston Gazette* and the *Charleston Daily Mail* in accordance with the terms of the agreements in Exhibit A. No agreement in Exhibit A may be modified, amended, superseded or terminated without the prior written approval of the United States for the term of the Final Judgment. Upon entering into the contracts in Exhibit A, any existing agreements between Gazette Company and MediaNews Group relating to the Publication of any Daily Newspaper in Charleston, West Virginia, other than those contained in Exhibit A, shall be void and shall not be enforced thereafter. Except as expressly authorized by the agreements in Exhibit A, Gazette Company and MediaNews Group shall not directly or indirectly enter into any agreement subsequent to the entry of this Final Judgment that relates to the Publication of any Daily Newspaper in Charleston, West Virginia, other than agreements entered into with third parties in

the ordinary course of business, without the prior written consent of the United States.

(2) Defendants shall not, without the prior written consent of the United States, pledge or otherwise offer as security or collateral, the assets comprising the Intellectual Property of the *Charleston Daily Mail*, in whole or in part, for credit or other consideration, to a greater extent than such assets were pledged or offered as security or collateral as of December 11, 2009.

B. The *Charleston Daily Mail* shall continue to be published as a Daily Newspaper. The publication of the *Charleston Daily Mail* as a Daily Newspaper shall not be terminated unless it is a Failing Firm and the United States has given its prior written approval, which approval shall not be unreasonably withheld. Prior to receiving written approval from the United States to terminate publication of the *Charleston Daily Mail* as a Daily Newspaper, Gazette Company and MediaNews Group may not establish a termination date for the *Charleston Daily Mail*. Disputes regarding the application of the provisions of this Section IV(B) may be submitted to the Court for resolution.

C. If during the term of this Final Judgment the *Charleston Daily Mail* shall cease publication as a Daily Newspaper, or the operating agreement between Defendants governing Charleston Newspapers is dissolved or terminated, or Charleston Newspapers Holdings, L.P. is dissolved or terminated (collectively referred to as "Termination Events"), ownership of the Intellectual Property of the *Charleston Daily Mail* shall, after the prior satisfaction of the claims of all creditors of Charleston Newspapers Holdings, L.P. in accordance with the provisions of Section 7.3 of the Amended and Restated Limited Partnership Agreement for Charleston Newspapers Holdings, L.P., immediately transfer to MediaNews Group at no cost. Within ninety days prior to the occurrence of any of the Termination Events, Gazette Company shall hire, subject to the approval of the United States, an appraiser experienced in the newspaper industry to

perform an assessment of the fair market value, separately, of each asset comprising the Intellectual Property of the *Charleston Daily Mail*. To the extent the valuations determine that any assets comprising the Intellectual Property of the *Charleston Daily Mail* may be freely disposed of by Gazette Company under the terms of Section 7.8 of the United Bank Loan Agreement or the equivalent provision of any future credit agreement, Gazette Company shall transfer those assets to MediaNews Group (or its assignee) at no cost. In the event Gazette Company is unable to transfer immediately all or some of the assets comprising the Intellectual Property of the *Charleston Daily Mail* due to any security interest or lien held on those assets by any creditor, Gazette Company shall use its good faith efforts to (1) persuade any such creditor to release the security interest or lien on those assets; (2) assist any third party seeking such a release; or (3) transfer the assets as soon as possible in the next fiscal year (to the extent permissible under the United Bank Loan Agreement or any future credit agreement). Any assets that are released by the creditors shall be transferred to MediaNews Group (or its assignee) at no cost. In the event that the *Charleston Daily Mail's* print and electronic archives are not transferred to MediaNews Group, Charleston Newspapers will grant to MediaNews Group (or its assignee) a royalty-free license to use the *Charleston Daily Mail's* print and electronic archives for the sole purpose of continuing to publish the *Charleston Daily Mail* for so long as MediaNews Group (or its assignee) publishes the *Charleston Daily Mail* as a Daily Newspaper in Charleston. Except as expressly authorized by this Final Judgment, Gazette Company shall not directly or indirectly transfer to any other Person the ownership of some or all of the Intellectual Property of the *Charleston Daily Mail* without the prior written consent of the United States. If during the term of this Final Judgment the ownership of some or all of the Intellectual Property of the *Charleston Daily Mail* is transferred from Gazette Company to any other Person, Gazette Company shall not reacquire any part of the

Intellectual Property of the *Charleston Daily Mail* during the term of this Final Judgment.

Transfer of title to the Intellectual Property of the *Charleston Daily Mail* by Gazette Company shall be made free and clear of any liens or other encumbrances to the free transfer of title by the acquirer (including but not limited to rights of first refusal).

D. The Editorial Content of the *Charleston Daily Mail* shall be determined solely by MediaNews Group and the staff of the *Charleston Daily Mail*. The Editorial Content of the *Charleston Gazette* shall be determined solely by Gazette Company and the staff of the *Charleston Gazette*. Gazette Company shall not, directly or indirectly, take any action to influence the Editorial Content of the *Charleston Daily Mail*, nor shall MediaNews Group, directly or indirectly, take any action to influence the Editorial Content of the *Charleston Gazette*. Gazette Company and MediaNews Group shall not enter into any agreement limiting the separate and independent determination of the Editorial Content of their respective Daily Newspapers.

E. Gazette Company and MediaNews Group shall not take any action with the intent to cause the *Charleston Daily Mail* to become a Failing Firm. Neither Gazette Company nor MediaNews Group shall discriminate against, or cause Charleston Newspapers to discriminate against, the *Charleston Daily Mail* in performing circulation sales or advertising sales activities.

F. Commencing no later than thirty (30) days after the entry of this Final Judgment and continuing for a period of no less than six (6) months thereafter, Defendants shall cause Charleston Newspapers to offer the *Charleston Daily Mail* at a discount of no less than fifty (50) percent off the regular retail price to all new subscribers. Charleston Newspapers shall inform prospective new subscribers of this discount in any subscription solicitation efforts that it undertakes. During this period, Charleston Newspapers may not extend this same discount, or any greater discount, to subscribers of the *Charleston Gazette*.

V. Affidavits

Within sixty (60) calendar days of the entry of this Final Judgment in this matter, and every year thereafter until the expiration of this Final Judgment, Defendants shall deliver to the United States an affidavit as to the fact and manner of their compliance with Section IV of this Final Judgment. Assuming the information set forth in the affidavit is true and complete, any objection by the United States to information provided by Defendants, including limitation on information, shall be made within fourteen (14) calendar days of receipt of such affidavit.

VI. Compliance Inspection

A. For the purposes of determining or securing compliance with this Final Judgment, or of determining whether the Final Judgment should be modified or vacated, or determining whether to consent to any proposed agreement per Section IV(A), or whether to approve a termination of publication per Section IV(B), or whether to consent to any transfer per Section IV(C), and subject to any legally recognized privilege, from time to time authorized representatives of the United States, including consultants and other persons retained by the United States, shall, upon written request of an authorized representative of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to defendants, be permitted:

- (1) access during defendants' office hours to inspect and copy, or at the option of the United States, to require defendants to provide hard copy or electronic copies of, all books, ledgers, accounts, records, data, and documents in the possession, custody, or control of defendants, relating to any matters contained in this Final Judgment; and
- (2) to interview, either informally or on the record, defendants' officers,

employees, or agents, who may have their individual counsel present, regarding such matters. The interviews shall be subject to the reasonable convenience of the interviewee and without restraint or interference by defendants.

B. Upon the written request of an authorized representative of the Assistant Attorney General in charge of the Antitrust Division, defendants shall submit written reports or response to written interrogatories, under oath if requested, relating to any of the matters contained in this Final Judgment as may be requested.

C. No information or documents obtained by the means provided in this Section shall be divulged by the United States to any person other than an 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 defendants to the United States, defendants represent and identify in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(1)(G) of the Federal Rules of Civil Procedure, and defendants mark each pertinent page of such material, "Subject to claim of protection under Rule 26(c)(1)(G) of the Federal Rules of Civil Procedure," then the United States shall give defendants ten (10) calendar days notice prior to divulging such material in any legal proceeding (other than a grand jury proceeding).

VII. Retention of Jurisdiction and Expiration of Final Judgment

This Court retains jurisdiction to enable any party to this Final Judgment to apply to this Court for further orders and directions as may be necessary or appropriate to carry out or construe this Final Judgment, including the agreements of the parties attached hereto as Exhibit A, to modify

any of their provisions, to enforce compliance, and to punish violations of their provisions. Unless this Court grants an extension, this Final Judgment shall expire five (5) years from the date of its entry. The expiration of this Final Judgment shall not trigger the termination of the agreements contained in Exhibit A. After the expiration of this Final Judgment, the agreements contained in Exhibit A will be governed by their own terms.

VIII. Public Interest Determination

Entry of this Final Judgment is in the public interest. The parties have complied with the requirements of the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16, including making copies available to the public of this Final Judgment, the Competitive Impact Statement, and any comments thereon and the United States's responses to comments. Based upon the record before the Court, which includes the Competitive Impact Statement and any comments and response to comments filed with the Court, entry of this Final Judgment is in the public interest.

DATED:

John T. Copenhaver, Jr.
United States District Judge

EXHIBIT A

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF WEST VIRGINIA
CHARLESTON DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

DAILY GAZETTE COMPANY,

and

MEDIANEWS GROUP, INC.

Defendants.

Civil Action No. 2:07-0329

Judge Copenhaver

Magistrate Judge Stanley

CERTIFICATE OF SERVICE

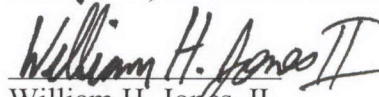
I hereby certify that on February 26, 2010, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following CM/ECF participants:

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