

[Trade Regulation Reporter - Trade Cases \(1932 - 1992\), United States v. Lee Shubert, Jacob J. Shubert, Marcus Heiman, United Booking Office, Inc., Select Theatres Corp., L. A. B. Amusements Corp., U.S. District Court, S.D. New York, 1982-1 Trade Cases ¶64,572, \(Oct. 5, 1981\)](#)

Federal Antitrust Cases

56-72 (MEL)

Trade Regulation Reporter - Trade Cases (1932 - 1992) ¶64,572

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United States v. Lee Shubert, Jacob J. Shubert, Marcus Heiman, United Booking Office, Inc., Select Theatres Corp., L. A. B. Amusements Corp.

1982-1 Trade Cases ¶64,572. U.S. District Court, S.D. New York, Civil Action No. 56-72 (MEL), Filed October 5, 1981.

Case No. 1015, Antitrust Division, Department of Justice.

Sherman Act

Headnote

Department of Justice Enforcement: Modification of Consent Decrees: Legitimate Theater: Theater Acquisition Ban.–

Under the terms of a modified consent decree, a theater operator was enjoined from acquiring a beneficial interest in any facility in New York City for use as a legitimate theater unless it showed that the acquisition would not unduly restrain competition. With respect to two specific projects for the construction of legitimate theaters, the operator was enjoined from acquiring a beneficial interest in more than two theaters from among the total number that might come into existence by reason of the projects. Any facility acquired before effectuation of one of the projects should be counted in the two theater limitation. An original 1956 consent decree (1956 Trade Cases ¶68,272) was rendered of no force or effect, except as modified, as to this theater operator.

For plaintiff: Ruth Dicker, Dept. of Justice, Antitrust Div., New York, N. Y. **For defendants:** Alvin M. Stein, of Parker, Chapin, Flattan & Klimpl, New York, N. Y.

Order and Judgment

Lasker, D. J.: The Shubert Organization, Inc., having moved this Court by Notice of Motion dated February 3, 1981, for an Order modifying, interpreting and terminating the Final Judgment entered in this action on the 17th day of February, 1956, notice thereof having been published inviting comments on the matter, all comments received having been reviewed by the Court, the United States of America being the only other party to the action and the parties having consented to the entry of a Modified Final Judgment, filed with the Court on April 30, 1981, all others claiming an interest in the matter having been fully heard, the Court having considered the matter and being fully advised and having rendered its ruling on this matter in open Court on September 4, 1981, it is hereby:

1. Ordered, Adjudged and Decreed: that the Final Judgment herein of February 17, 1956, be and hereby is of no further force or effect, except insofar as it is modified to read in full as follows:

It is Hereby Ordered, Adjudged and Decreed that:

I.

[Jurisdiction]

This Court has jurisdiction of the subject matter herein and of the parties hereto, and the complaint states a claim upon which relief may be granted against the defendants under Section 1 and 2 of the Act of Congress of July 2, 1980, c. 647, 26 Stat. 209, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," commonly known as the Sherman Act, as amended.

II.

[Definitions]

As used in this Modified Final Judgment (A) "Legitimate Theatre" means a building or portion thereof which (1) is customarily used for the purpose of presenting stage attractions performed in person by professional actors, including plays, musicals or operettas, or (2) is suitable, and is acquired by anyone, for that purpose, or (3) is being used or is to be used for that purpose in any particular instance. (B) "Defendant" includes the Shubert Organization, Inc. and its parent, the Shubert Foundation, successors-in-interest to defendants herein.

III.

[Applicability]

The provisions of this Modified Final Judgment applicable to any defendant shall apply to such defendant, his or its subsidiaries, affiliates, officers, directors, agents, employees, nominees, successors or assigns, and to all other persons in active concert or participation with them who receive actual notice of this Modified Final Judgment by personal service or otherwise.

IV.

[Acquisition Ban]

Except with the respect to the Portman Hotel Project and the 42nd Street Development Project as described in Section V below, until January 1, 1985, Defendant is enjoined from acquiring a beneficial interest in any facility in New York City for use as a legitimate theatre unless it makes an affirmative showing to this Court that such acquisition will not unduly restrain competition.

V.

[Acquisition Ban]

Until January 1, 1987, Defendant is enjoined from acquiring a beneficial interest in more than two theatres (of which only one may be in excess of 1,400 seats) from among the total number which may hereinafter come into existence for use as legitimate theatres by reason of (a) the construction of a legitimate theatre as part of the Portman Hotel Project currently contemplated to be built on the West side of Broadway on West 45th-46th Street in New York City, and (b) the construction or conversion of facilities for use as legitimate theatres on West 42nd Street in New York City between 7th and 8th Avenues as part of a program to implement the 42nd Street Development Project, as currently described in a document dated February 10, 1981, prepared by the New York State Urban Development Corporation, the New York City Department of City Planning and New York City Public Development Corporation. Any facility within the contemplation of the 42nd Street Project which might be acquired by Shubert before the effectuation of that Project shall be counted in the two theatre limitation set out in this Section V.

VI.

[Compliance]

For the purpose of determining or securing compliance with this Modified Final Judgment, and subject to any legally recognized privilege, from time to time:

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

- (1) access during office hours of defendant to inspect all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of the defendant, which may have counsel present, relating to any matters contained in this Modified 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 the defendant's principal office, the defendant shall submit such written reports, under oath if requested, with respect to any of the matters contained in the Modified Final Judgment as may be requested.

No information or documents obtained by the means provided in this Section V shall be divulged by any representative of the Department of Justice 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, or for the purpose of securing compliance with this Modified Final Judgment, or as otherwise required by law.

C. If at the time information or documents are furnished by the defendant to plaintiff, such 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 the 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 10 days notice shall be given by plaintiff to the defendant prior to divulging such material in any legal proceeding (other than a grand jury proceeding) to which the defendant is not a party.

VII.

[Retention of Jurisdiction]

Jurisdiction is retained by this Court until January 1, 1987 for the purpose of making such further orders or directions as may be necessary or appropriate to interpret or otherwise effectuate the terms of this Order.