

Complaint.

FEDERAL TRADE COMMISSION

v.

AMERICAN FILM COMPANY.

COMPLAINT IN THE MATTER OF THE ALLEGED VIOLATION OF SECTION 5
OF AN ACT OF CONGRESS APPROVED SEPTEMBER 26, 1914.

Docket 903—April 11, 1923.

SYLLABUS.

Where a corporation engaged in the business of distributing, selling, and leasing motion pictures and photo plays, retitled, reissued, and exploited certain photo plays theretofore issued and exploited by it under their original titles, without stating or indicating in the negotiations and contracts of lease, or in the advertising matter used either in offering the pictures to exhibitors, or to the public, that the same were reissues; with the result that exhibitors and their patrons were misled into believing said reissues to be new pictures:

Held, That such practices, under the circumstances set forth, constituted unfair methods of competition.

COMPLAINT.

Acting in the public interest pursuant to the provisions of an Act of Congress, approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission charges that the American Film Company, hereinafter referred to as respondent has been and is using unfair methods of competition in commerce in violation of the provisions of Section 5 of said Act, and states its charges in that respect as follows:

PARAGRAPH 1. That the respondent is a Virginia corporation with its principal office and place of business located in the city of Chicago, State of Illinois, now and at all times mentioned engaged in the business of distributing, leasing, and selling motion picture films throughout the United States in direct competition with other persons, firms, copartnerships, and corporations similarly engaged.

PAR. 2. That the respondent from its principal office in the city of Chicago makes and enters into contracts of lease or sale for the positive prints of motion picture films which when projected through a machine depict what is known as a motion picture or photo play, with exhibitors throughout the United States by correspondence and traveling salesmen and through its branch offices and local representatives and causes such film, together with great quantities of advertising matter, to be packed, moved, and transported by common carrier to the theaters of these exhibitors located in the principal cities and towns of the United States, where they were displayed or

Complaint.

6 F. T. C.

exhibited to the public, after which they are similarly packed, moved, and transported to other theaters in different States for exhibition; and there is continuously and has been at all times herein mentioned a constant current of trade and commerce in such motion picture films between and among the several States of the United States and in particular from different States of the United States through other States in and to the city of Chicago, State of Illinois, and therefrom through, in, and to other States of the United States and the District of Columbia.

PAR. 3. That after a photo play has been exhibited generally to the public throughout the United States, in the course of which the film has traveled from city to city and passed a great number of times through projecting machines, such films become second class or old for the reason that having been once generally exhibited to the public they no longer possess novelty or newness and because through such usage frequently a film becomes scratched, marred, or otherwise mechanically injured so that it can not be projected upon the screen with satisfactory clearness and lack of blemish. The films thus exhibited throughout the United States and thereafter released and distributed by the producer for reexhibition are known to the trade and are hereinafter called reissues, and such reissues bring lower prices than films never before released and exhibited. It is the custom and usage of the trade, and it was so understood between respondent and its customers, that unless otherwise specifically agreed between dealer and exhibitor the films released shall depict new photo plays not theretofore exhibited or shown to the public in the locality in which exhibitor's theater is located, and it is also customary for the dealer to furnish in connection with the films sold or leased posters, bills, lantern slides, lobby cards, and other advertising matter to be used by the exhibitor in announcing and exploiting the exhibition of such films to the public.

PAR. 4. That prior to the year 1919 the respondent released certain films theretofore produced by it which depicted photo plays titled, respectively, *The Mate of the Sally Ann*, *Snap Judgment*, *The Torch Bearer*, *In Bad Faith*, *Annie for Spite*, *The Manager of the B. & A.*, *Judith of the Cumberlands*, *The Frame Up*, *My Fighting Gentleman*, *Youth's Endearing Charms*, *The Marriage Bargain*, *The Diamond Runners*, *The Lass of the Limberlands*, and *New York Luck*, and thereafter distributed, leased, and advertised the same, and these films were extensively exhibited to the public in theaters throughout the United States and became well known to the motion picture theater going public under and by their respective titles. In the years 1919 and 1920 the respondent in the conduct of its business

as aforesaid reissued such films after adding thereto in some instances an inconsequential amount of new or additional matter under new titles, respectively, as follows, to wit: Peggy Rebels, Slam Bang Jim, From the West, Quick Action, The Virtuous Outcast, Sally Shows the Way, The Man from Medicine Hat, The Moonshine Menace, High Gear Jeffrey, a Rough Shot Fighter, Youth's Melting Pot, The Innocence of Lizette, A Crook's Romance, The Loggers of Hell Roarin' Mountain, and A Live Wire Hick, and released, distributed, advertised, and leased such reissues without apprising the public of the fact that they were reissues being distributed under new titles and without indicating or stating the same in either the photo plays themselves or in the posters, bills, slides, lobby cards, and other advertising matter furnished by the respondent and used in exploiting such exhibitions; and such advertising matter either wholly failed to state or set forth that these films had been formerly released under the aforesaid old titles or contained equivocal statements in this respect printed in such type as not to be readily observed, and which did not fairly convey the information that such films were reissues, and the respondent did not in any manner disclose to the exhibitors that such films were reissues, but on the contrary supplied the same in the ordinary course of business as and for new releases and charged the exhibitors for the privilege of exhibiting the same the price regularly charged for the right to exhibit new or current releases; and said exhibitors upon receiving these reissues and advertising matter exhibited the same to the public and used the advertising to exploit such exhibition without knowing and therefore without disclosing to the public the fact that the films were reissues. In some of the photo plays depicted by these films the leading rôles had been enacted by an actor or actress in the employ of the respondent who had become well known to and popular with the general public, commonly known as stars, and the popularity of these photo plays had originally largely depended upon the fact that such stars enacted the leading rôles and in some instances the stars who had enacted such leading rôles as aforesaid had severed their connection with the respondent before the time said plays were reissued and had entered the employment of competitors of the respondent, and at the time these reissues were being distributed and exhibited such stars were appearing in productions of these competitors and lending thereto the same value and popularity. That the reissuing, leasing, and advertising of such films as aforesaid had the capacity and tendency to and did mislead and deceive exhibitors and cause them to believe that they were leasing and exhibiting new films never before released, and similarly caused

Findings.

6 F. T. C.

their patrons to attend exhibitions of such films in the belief that they were to see new photo plays never theretofore shown, and by reason thereof injuring the reputations of such exhibitors and causing them to lose the good will and patronage of the motion picture going public, and had the further capacity and tendency unduly to hinder competitors of the respondent who did not release, distribute, lease, advertise, and exhibit reissued films under new titles, and to discredit the stars who enacted the leading rôles in such reissues, and to discredit the productions of competitors of respondent in which said stars were appearing before the public at the same period of time that these reissues were being similarly exhibited, and thus to prejudice the public against said stars and said competing productions.

PAR. 5. That the above alleged acts and things done by respondent are all to the prejudice of the public and respondent's said competitors and constitute unfair methods of competition in commerce, within the intent and meaning of Section 5 of an Act of Congress, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

Pursuant to the provisions of an Act of Congress, approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission issued and served a complaint upon the respondent, American Film Company, charging it with the use of unfair methods of competition in violation of the provisions of said Act.

The respondent, American Film Company, having filed its answer, hearings were had and evidence was introduced in support of the complaint and on behalf of the respondent before an examiner of the Federal Trade Commission theretofore duly appointed, at which hearings the respondent appeared and was represented by counsel.

And thereupon this cause came on for final hearing upon the complaint and the answer thereto, brief by the Commission, report of the trial examiner, and was argued by counsel, and the Commission having duly considered the record and being now fully advised in the premises, makes this its findings as to the facts and conclusion:

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. The respondent, the American Film Company, is and at all times hereinafter mentioned was a corporation organized

and existing under and by virtue of the laws of the State of Virginia, with its principal office and place of business in the city of Chicago, State of Illinois, and engaged in and throughout the various Territories and States of the United States in the business of distributing, leasing, and selling motion pictures and photoplays to owners and operators of motion picture theaters (hereinafter called exhibitors) for exhibition to the public, and is similarly engaged in distributing motion pictures and photo plays to persons, partnerships, and corporations (hereinafter called state-righters) for limited redistribution to exhibitors within specified territories. In the conduct of such business, respondent is now and at all times hereinafter mentioned was in competition with other persons, partnerships, and corporations similarly engaged in the business of distributing, leasing, and selling motion pictures and photo plays.

PAR. 2. In distributing to exhibitors and state-righters its motion pictures respondent's method of doing business is as follows: It makes positive photographic prints of motion pictures and photo plays previously produced by it, which prints it arranges and packs in such a manner as to be adapted for use in motion-picture projecting machines. These positive prints are hereinafter mentioned simply as prints. Such prints are shipped from respondent's aforesaid place of business in the city of Chicago to its local leasing agents in various States throughout the United States and to said state-righters, both of whom in turn deliver them to exhibitors for presentation to the public. The motion pictures and photo plays thus furnished for exhibition are known to the trade as and are hereinafter called releases. In the instances in which the prints are distributed by respondent itself to the exhibitors, there are contracts of lease executed between the exhibitors and the Chicago office of respondent, by the terms and provisions of which respondent undertakes to supply prints of certain named releases to the exhibitors, together with the right to exhibit them for a stated period in consideration of a stipulated sum, which the exhibitors agree to pay.

PAR. 3. When a motion picture or photo play has run the usual course of exploitation and exhibition generally throughout the United States, or any considerable portion thereof during one or more theatrical seasons, and demand therefor and/or exploitation thereof have practically ceased, so that the picture has for a substantial length of time had no appreciable amount of projection in motion-picture theaters generally throughout the United States or any considerable portion thereof; then, if a new exploitation of such picture is made by the producer or a distributor, during a subsequent theatrical season, together with a fresh complement of ad-

Findings.

6 F. T. C.

vertising matter, in an effort to lease to exhibitors new or old prints of the photographic negative of such former production of scenes and action, the act of the producer or distributor in so doing is commonly and generally known and designated by the trade and the public as the reissue of the picture. When a new title is given to a picture upon its reissue, as above described, it is the well established and generally accepted and practiced custom and usage in the industry to append a statement to the main titles, on the films, and in the advertising and publicity matter, and in the contracts of lease to exhibitors, that the picture is a reissue or revival of a picture of a stated title.

PAR. 4. Some time prior to the year of 1917 the respondent released the following motion pictures:

The Mate of the Sally Ann.	Youth's Endearing Charm.
Snap Judgment.	The Frame Up.
New York Luck.	The Lass of the Limberlands.
My Fighting Gentleman.	In Bad.
The Innocence of Lizette.	Annie for Spite.
Faith.	Judith of the Cumberlands.
The Torch Bearer.	The Diamond Runners.
The Manager of the B. & A.	

Beginning with the year 1915 these pictures were distributed for the respondent by Mutual Film Corporation and its successor, Exhibitors' Mutual Distributing Corporation, and during such distribution they were extensively exploited and exhibited throughout the entire United States. Demand therefor having ceased, about half of these pictures were withdrawn from the market in the year of 1917; and due to a severance of relations between such distributors and respondent, and also due to cessation of demand therefor, the remainder were withdrawn from the market in 1918.

PAR. 5. During the years of 1919 and 1920 respondent reissued such old pictures under new titles as follows, respectively:

Peggy Rebels.	The Virtuous Outcast.
Slam Bang Jim.	From the West.
A Live-Wire Hick.	Quick Action.
Youth's Melting Pot.	Sally Shows the Way.
High Gear Jeffrey.	The Moonshine Menace.
The Loggers of Hell Roarin' Mountain.	A Crook's Romance.
A Rough Shod Fighter.	The Man from Medicine Hat.
The Marriage Bargain.	

These reissued pictures were distributed to exhibitors in some instances directly by respondent and in other instances by state-righters. By these means such pictures were furnished to exhibitors throughout the various States of the United States and were by them exhibited to the public.

PAR. 6. Under both of these methods of distribution, the advertising matter used in offering the pictures to the exhibitors, and used by the exhibitors in offering the pictures to the public, was furnished by respondent. Such advertising matter conspicuously displayed the new titles in large type, followed in small type by the words "Adapted from," which were followed in turn by the old titles in much smaller type than the new titles. In case of three of these reissues, namely, "Sally Shows the Way," "Quick Action," and "The Man from Medicine Hat," the advertising, which was furnished by respondent to exhibitors for use by them in offering the pictures to the public, had the word "formerly" in place of the words "Adapted from" preceding the old titles as above described; but the advertising furnished by respondent for use by its salesmen and by state-righters in offering such pictures to exhibitors, in all cases contained the words "Adapted from" as first above described.

PAR. 7. The contracts of lease under which respondent furnished these pictures to exhibitors in the States of New York and New Jersey did not disclose that the pictures to be furnished would be reissues. The salesmen of respondent, in the course of negotiations leading up to and consummating said contracts of lease with said exhibitors, furnished no information to such exhibitors to the effect that such pictures were reissues.

PAR. 8. Said advertising matter so furnished by respondent, and used by both respondent and said state-righters in offering such pictures to exhibitors, and used, in turn, by the exhibitors in advertising such pictures to the public, contained no matter, statement, or information which in any manner gave notice that such reissued pictures formerly had been released and exhibited to the public under other titles.

PAR. 10. The acts and conduct of respondent in so offering and holding out its said reissued pictures to the trade and general public as aforesaid, caused exhibitors and exhibitors' patrons in the States of New York and New Jersey to believe that these reissued motion picture photoplays were new pictures, whereas in truth and in fact they were reissues. The acts and conduct of respondent in so offering and holding out its said reissued pictures to the trade and general public as aforesaid, had the capacity and the tendency to cause exhibitors and exhibitors' patrons in various States of the United States to believe that these reissued motion picture photoplays were new pictures, whereas in truth and in fact they were reissues.

Order.

6 F. T. C.

CONCLUSION.

That the practices of the said respondent, under the conditions and circumstances described in the foregoing findings, are unfair methods of competition in interstate commerce, and constitute a violation of the Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

ORDER TO CEASE AND DESIST.

This proceeding having been heard by the Federal Trade Commission upon the pleadings, the testimony and evidence received by an examiner duly appointed by the Commission, the report of said examiner upon the facts and conclusion, the exceptions thereto, and the brief of counsel for the Commission, and the Commission having made its findings as to the facts and its conclusion that the respondent has violated the provisions of an Act of Congress, approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes,"

Now, therefore, it is ordered, That the respondent, American Film Company, its agents, servants, and employees, cease and desist from, directly or indirectly, advertising, selling, or leasing, or offering to sell or lease, reissued motion picture photo plays under titles other than those under which such photo plays were originally issued and exhibited, unless the former titles of such photo plays and the fact that they theretofore have been exhibited under such former titles, be clearly, definitely, distinctly, and unmistakably stated and set forth, both in the photo play itself and in any and all advertising matter used in connection therewith, in letters and type equal in size and prominence to those used in displaying the new titles.

And it is further ordered, That the respondent, American Film Company, shall file with the Commission, within thirty (30) days from the date of this order, its report in writing stating the manner and form in which this order has been conformed to.

HYMAN & ZASLAV.

97

Complaint.

FEDERAL TRADE COMMISSION

v.

ELI HYMAN AND LOUIS M. ZASLAV, PARTNERS, DOING
BUSINESS UNDER THE NAME AND STYLE OF HYMAN
AND ZASLAV.