

Complaint.

FEDERAL TRADE COMMISSION

v.

SIGNET FILMS, INC.

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

Docket 936—April 30, 1923.

SYLLABUS.

Where a corporation engaged in the business of selling and leasing motion pictures and photoplays,

(a) Purchased, retitled, reissued and exploited a photo play theretofore issued and exploited, without stating or indicating in the advertising matter supplied to exhibitors and distributors for use in offering the picture to the public, that the film was a reissue; and

(b) Represented the same in its contracts of lease as a first run picture;

With the effect of misleading exhibitors and their patrons into believing the same to be a new picture and with a capacity and tendency to secure the lease and public patronage thereof in that belief, and with the intent so to do:

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 Signet Films, Inc., 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. The respondent is a corporation organized under the laws of the State of New York, with principal office and place of business in the city of New York, in said State. It is engaged in the business of supplying to the owners and operators of moving-picture theatres the positive films of photoplays and moving pictures for exhibition in their respective theatres. Said positive films are hereinafter called films, and said owners and operators of moving-picture theatres are hereinafter called exhibitors. The respondent as a distributor procures the films supplied by it to the exhibitors from various individuals, partnerships, and corporations engaged in the business of producing theatrical entertainments and photoplays recorded upon photographic negative films, and of thereafter making or granting to others the right to make films adapted for use in motion picture projecting machines, and of leasing and granting to

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distributors and exhibitors the right to exhibit said theatrical productions and photoplays to the public. Said persons, partnerships, and corporations engaged in the business of producing photoplays, as above set forth, are hereinafter called producers. The respondent herein in the regular course of business, after receiving from the producers the negative and positive films, causes positive films to be made from the negative films and transported from its place of business in New York into and through other States of the United States and the District of Columbia to the aforesaid exhibitors at the points where their several theatres are located. In the course and conduct of its said business, respondent herein continuously has been and now is in competition with other individuals, partnerships, and corporations similarly engaged in the business as distributors of positive films.

PAR. 2. The said respondent, as well as other distributors of photoplays, at times secures positive films of photoplays from various producers, and supplies same to exhibitors as aforesaid, which said films have theretofore been exhibited to the public and upon being again so exhibited were and are known to the trade as reissued films, and do not have the commercial value of a film of a new photoplay.

PAR. 3. Some time in 1915 the Intermotion Film Corporation produced a photoplay entitled "The Decoy," which was leased to the Mutual Film Exchange for a number of months and was widely distributed by that exchange under that title. During the year 1920 the negative film of this photoplay was purchased for the respondent herein by one Neff Nagen, at that time secretary and treasurer of said respondent, and on or about November 1, 1920, said respondent began, and for some months thereafter continued, the distribution of positive films of this photoplay to exhibitors thereof throughout the several States, as set forth in the foregoing paragraph, under the title "The Faithless Sex," without disclosing to the exhibitors that said film was a reproduction and a reissue of the old photoplay "The Decoy." The said respondent supplied each exhibitor, along with the film, certain bills, posters, and other advertising matter in which the said photoplay was advertised as "The Faithless Sex," said advertising matter containing no notice or statement disclosing to the readers thereof that said photoplay was a reproduction or reissue of the old photoplay "The Decoy," but on the contrary the said advertising was worded and designed in a manner calculated to mislead and deceive the theatre-going public into the belief that said photoplay was a new or different photoplay.

PAR. 4. There are a considerable number of distributors of films of only new photoplays. There are also many distributors of re-

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issued films of photoplays who do not rename said photoplays and distribute them as films of a new photoplay, or in any manner indicate to the theatre-going public that said old reissued films are films of a new photoplay.

PAR. 5. The above acts and things done by respondent had the capacity and tendency of misleading and deceiving the aforesaid exhibitors and the public throughout a large portion of the United States into the belief that the said photoplay, "The Faithless Sex," distributed and exhibited as above set forth, was a new photoplay, and to induce the exhibitors to purchase said photoplay and the public to patronize the exhibition of said photoplay in that belief.

PAR. 6. The above alleged acts and things done by respondent are all to the prejudice of the public and of respondent's 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, Signet Films, Inc., charging it with the use of unfair methods of competition in violation of the provisions of said act.

The respondent, Signet Films, Inc., having filed its answer, the case was duly set down for hearing before an examiner of the Federal Trade Commission and the respondent and its attorney were duly notified thereof, but respondent failing to appear either by its attorney or otherwise, evidence was introduced in support of the complaint and respondent by its attorney has filed a written waiver of any right to introduce evidence or to present the case to the Commission by brief or oral argument, and has stated that it has no objection to offer to the issuance of an order herein.

And thereupon this cause came on for final hearing upon the complaint and the answer thereto, the evidence introduced and the report of the trial examiner, 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, Signet Films, Inc., is and at all times hereinafter mentioned was a corporation organized and existing

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under and by virtue of the laws of the State of New York, with its principal office and place of business in the city of New York, State of New York, and engaged in and throughout the various States and Territories of the United States in the business of distributing, leasing, and selling motion pictures and photoplays to owners and operators of motion picture theatres (hereinafter called exhibitors) for exhibition to the public, and is similarly engaged in distributing motion pictures and photoplays 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 photoplays.

PAR. 2. In distributing to exhibitors and state-righters its motion pictures, respondent's method of doing business is as follows: It purchases or leases from motion picture producers or owners negative films and positive photographic prints of motion pictures and photoplays, and makes or has made for it from negative films purchased or leased from motion picture producers positive photographic prints of motion pictures and photoplays, which prints it arranges and packs in such manner as to be adapted for use in motion picture projecting machines. These positive photographic prints are hereinafter mentioned simply as prints. Such prints are shipped from respondent's aforesaid place of business in the city of New York to exhibitors in the States of New York and New Jersey, and state-righters in various States throughout the United States, who in turn deliver them to exhibitors for presentation to the public. The motion pictures and photoplays 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 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 photoplay has run the usual course of exploitation and exhibition generally throughout the United States, or any considerable portion thereof, for one or more theatrical seasons and the demand therefor and/or exploitation thereof has practically ceased, so that the picture has for a substantial length of time no appreciable amount of exhibition in motion picture theatres 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 advertising matter, in an effort to lease to exhibitors new or old prints of the photographic negative of such former production of scenes of 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 of competitors of said respondent 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 1915 the motion picture entitled "The Decoy" was released in the city of New York by a producer of motion pictures or photoplays, known as Filmotion Company of America or American Filmotion Company. The negative film was leased to the Mutual Film Corporation, a distributor of motion picture film, having its main office in New York City and operating twenty-eight (28) exchanges or branch offices in important distributing centers throughout the United States. From the negative film, a large number of prints were made and widely distributed by the Mutual Film Corporation and, during such distribution, the picture was actively exploited and advertised and extensively exhibited throughout the entire United States, and, by reason of their long and frequent usage and general exhibition to the public, the negative films and prints became scratched, marred, torn, or otherwise mechanically injured and lost the novelty and clearness which they had originally possessed. Demand for the picture ceased and the term of the lease having expired, the negative film and eleven (11) prints thereof were returned to the producer.

PAR. 5. During the year 1920 the aforementioned producer sold the negative film of the above mentioned picture, entitled "The Decoy," and eleven (11) prints thereof, as an old or second-hand picture, to N. Nagem, who at the time of the sale was secretary and treasurer of respondent. On or about November 1, 1920, the respondent renamed the old picture "The Faithless Sex" and reissued it and continued its distribution throughout the United States, in some instances directly to exhibitors and in some instances to state-righters, who distributed it to exhibitors who exhibited it in their theatres at various points located in several different States, without disclosing to the exhibitors thereof that the picture was a reproduction or reissue of the old photoplay "The Decoy."

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PAR. 6. The contracts of lease under which respondent furnished this picture did not disclose that the picture was a reissue, but represented that it was a first-run picture.

PAR. 7. The respondent supplied each exhibitor and state-righter, along with the prints which were sent them, certain posters for advertising purposes in which the photoplay was advertised as "The Faithless Sex." Said advertising matter, so furnished by respondent, and used by both respondent and said state-righters in offering said picture to exhibitors, and used by the exhibitors, in turn, in advertising such picture to the public, contained no notice or statement which would in any manner indicate to readers thereof that the picture was a reproduction or reissue of a picture which had been formerly released and exhibited to the public as "The Decoy."

PAR. 8. The acts and conduct of respondent in so offering and holding out its said reissued picture to the trade and general public as aforesaid, caused exhibitors and exhibitors' patrons in the States where it was shown to believe that the picture was a new or different picture or photoplay, and such acts and conduct in so offering and holding out its said reissued picture as aforesaid were intended and designed and had the capacity and tendency to mislead and deceive exhibitors and the theatre-going public in various States in the United States into the belief that the reissued picture or photoplay was a new or different picture or photoplay and to induce exhibitors to lease said photoplay and the public to patronize the exhibition of said photoplay in that belief.

CONCLUSION.

That the methods and practices set forth in the foregoing findings as to the facts and each and all thereof, under the circumstances therein set forth, constitute unfair methods of competition in interstate commerce in violation of the provisions of Section 5 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, and the report of said examiner upon the facts; and the respondent having failed to appear at the time and place set for the hearing and having

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by its attorney duly waived the right to introduce testimony in opposition to the complaint or to present the matter to the Commission by brief or oral argument, 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, Signet Films, Inc., its officers, directors, agents, servants, and employees, cease and desist from directly or indirectly advertising, selling, or leasing, or offering to sell or lease, reissued motion picture photoplays under titles other than those under which such photoplays were originally issued and exhibited, unless the former titles of such photoplays 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 photoplay 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, Signet Films, Inc., shall file with the Commission, within thirty (30) days from the date of service upon it of a copy of this order, its report in writing stating the manner and form in which it has complied with this order.

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HENRY LEDERER & BROS., INC.