

Complaint.

FEDERAL TRADE COMMISSION

v.

FOX FILM CORPORATION.

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

Docket 901—June 6, 1923.

SYLLABUS.

Where a corporation engaged in the business of producing and leasing motion pictures and photo plays to exhibitors under contracts binding them to use only advertising matter furnished or approved by it, reissued and exploited as feature pictures under new titles, 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 supplied by it to exhibitors for use in offering its pictures to the public, that the same were reissues; with the result that exhibitors and their patrons were misled into believing said photo plays 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 Fox Film Corporation, hereinafter referred to as respondent, has been and is using unfair methods of competition in interstate commerce in violation of the provisions of Section 5 of said Act, and states its charges in that respect as follows:

PARAGRAPH 1. Respondent is a corporation organized under the laws of the State of New York, with its main office and principal place of business in the city of New York in said State. It is and at all times hereinafter stated has been engaged in the production of motion pictures and photoplays, and of thereafter leasing and selling to the owners and operators of moving-picture theaters throughout the United States the right to exhibit said plays to the public. Said owners and operators are hereinafter called exhibitors. For the purpose of contracting with exhibitors for said exhibition rights and distributing to them its said motion pictures and photoplays, respondent maintains agencies at various points in the several States of the United States. Respondent's method of doing business in connection with the exhibition of said motion pictures and photoplays to the public is as follows: It makes positive photographic

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films of the motion pictures and photoplays produced by it, which films it arranges and packs in such a manner as to be adapted for use in motion-picture projecting machines. Said positive films are hereinafter referred to as films. From time to time as motion pictures and photoplays are produced, and films thereof made by it, respondent ships said films from its aforesaid place of business in the city of New York to its said agencies, and said agencies deliver the same to the exhibitors for presentation to the public. Motion pictures and photoplays thus furnished for exhibition are known to the trade, and hereinafter called releases. In the course and conduct of its said business, respondent is in competition with other persons, partnerships, and corporations similarly engaged in the production and distribution of photoplays in interstate commerce and with the trade generally. Respondent through its said agencies enters into leasing contracts with the exhibitors, by the terms of which respondent agrees to furnish the exhibitor from time to time, over a fixed period in the future, its current releases and grants the right to the exhibitor to exhibit same to the public for a stated number of performances. In consideration of said undertaking, the exhibitor agrees to pay the respondent a certain sum of money stated in said lease. It is further provided in said leases that the exhibitors will not use any posters, bills, or other advertising matter to advertise exhibitions of motion pictures and photoplays contracted for in said leases except advertising matter furnished or approved by respondent. It is the custom of the trade that unless otherwise specifically agreed between the parties photoplays so furnished to an exhibitor shall be new photoplays, not theretofore exhibited to the public in the locality in which the exhibitor's theater is in each instance located, and through the representations of its agents in charge of said agencies, and by reason of said custom in the trade, it is understood and agreed between respondent and exhibitors entering into aforesaid leases that the motion pictures and photoplays furnished thereunder by respondent will be new productions not theretofore exhibited in the locality where the theater of the exhibitor is in each instance located. The amount which the exhibitor agrees to pay under the terms of the said lease for the privilege of exhibiting respondent's releases is, among other things, based upon the undertaking by respondent to furnish new releases as above set out. After a photoplay has been exhibited to the public throughout the United States, in the course of which the film has traveled from city to city and has passed a great number of times through projecting machines such films become second class or old films for the reason that they have been once generally exhibited to the public and for

that reason no longer possess novelty, and frequently have become scratched, marred, and otherwise mechanically injured, so that they can not be projected upon the screen with satisfactory clearness and lack of blemish. Films thus once exhibited throughout the United States and thereafter sent out by the producer for reexhibition are known to the trade as, and are hereinafter called, "re-issues." The price fixed and paid in the trade generally for the privilege of exhibiting re-issues is much less than the amounts fixed in said leases between respondent and the exhibitors to be paid by the latter for the privilege of exhibiting respondent's releases.

PAR. 2. In the year 1919 respondent selected several photoplays which had previously been produced by it and exhibited throughout the United States and which, therefore, if re-exhibited would, under the custom of the trade, be reissues. Respondent gave to said photoplays new names, different from those under which said plays had theretofore been exhibited to the public, and correspondingly changed the films of said photoplays, and through its said several agencies supplied said films to exhibitors with which it had leases as hereinbefore set out in purported performance of respondent's aforesaid undertakings in said leases. In addition to the said changes in the names of said films, respondent furnished posters, bills, and other advertising matter to its exhibitors to be used by them in connection with said films, which advertising matter exploited said plays under said new names and wholly failed to disclose that said plays were reissues, and respondent further wholly failed to disclose to said exhibitors the fact that said films were reissues. Said exhibitors, upon receiving said reissues and advertising matter, exhibited said reissues to the public and used said advertising matter to advertise said exhibitions without knowing, and therefore without disclosing to the public, the fact that said photoplays were reissues. The photoplays referred to in this paragraph are:

A play originally issued as "The Yankee Way" and reissued as "Sink or Swim";

A play originally issued as "The Love Thief" and reissued as "The She Tiger";

A play originally issued as "The Silent Lie" and reissued as "Camille of the Yukon";

and others.

PAR. 3. The aforesaid acts and things done by respondent had the capacity and tendency to mislead aforesaid exhibitors and through them the public into the belief that aforesaid reissues were new releases and therefore to cause said exhibitors to advertise and exhibit, and the public to patronize, said exhibitions in that belief, before the fact that said plays were reissues became apparent to either

said exhibitors or the public and therefore tended to injure the reputation of said exhibitors with, and to cause them to lose the good will of, the theater-going public.

PAR. 4. The above alleged acts and things done by respondent constitute an unfair method 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, the Federal Trade Commission issued and served a complaint upon the respondent, Fox Film Corporation, charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act.

Respondent, Fox Film Corporation, having filed answer and entered appearance by its attorney, and hearing having been duly had before an examiner of the Commission theretofore duly appointed, in course of which agreement as to the facts in the proceeding having been made and duly entered of record, briefs having been submitted for and in behalf of the Commission and respondent by their respective attorneys, oral argument having been waived, and it having been stipulated and agreed of record that the Commission proceed forthwith to make its report, stating its findings as to the facts and issue its order disposing of this proceeding, and the Commission, having considered the record and being fully advised in the premises, makes this its report, stating its findings as to the facts and conclusion.

FINDINGS AS TO THE FACTS.

PARAGRAPHS 1. The respondent, the Fox Film Corporation, is and at all times hereinafter mentioned was, a corporation organized and existing 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, in said State, and engaged in the business of producing motion pictures and photoplays and of leasing same to owners and operators of motion-picture theaters (hereinafter called exhibitors) in and throughout the various Territories and States of the United States, for exhibition to the public. 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 producing, distributing, leasing, and selling motion pictures and photoplays. For the purpose of dealing

with exhibitors and distributing to them its motion pictures and photoplays, respondent maintains branch offices or agencies at various points in the several States of the United States.

PAR. 2. In distributing to exhibitors its motion pictures, respondent's method of doing business is as follows: It makes positive photographic films of the motion pictures and photoplays produced by it, which films it arranges and packs in such a manner as to be adapted for use in motion-picture projecting machines. These positive films are hereinafter mentioned as films. As from time to time motion pictures and photoplays are produced by respondent, films thereof are made and shipped from its aforesaid place of business in the city of New York to its various agencies or branch offices, which in turn deliver them to the 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. They are furnished to the exhibitors in pursuance of contracts of lease executed between the exhibitors and the New York office of respondent, by the terms and provisions of which the respondent undertakes to supply its current releases to exhibitors together with the right to exhibit them for a stipulated sum which the exhibitors agree to pay, for a stated period. These contracts of lease also provide that the exhibitors will not use any posters, bills or other matter to advertise the exhibition of motion pictures and photoplays furnished by the respondent, except such as is supplied or approved by respondent.

PAR. 3. When a picture or photoplay has been run and generally exploited in the United States, or any considerable portion of it, and is again offered for exhibition at a later period, it is commonly known and designated as a reissue or revival. According, however, to well established generally accepted and practiced usage and custom of the motion-picture industry, unless the original title of the picture is retained or the picture is so described in the contract between the producer and the exhibitor, and in the advertising matter, as a reissue or revival of a photoplay previously released, it is understood by the exhibitor and the public that the photoplay or picture to be furnished or screened is or will be a new picture, that is to say, a continuity not previously exhibited or exploited throughout any considerable portion of the United States.

PAR. 4. On December 18, 1916, the respondent released a motion picture which was entitled "The Love Thief." On the 28th day of May, 1917, the respondent released a motion picture which was entitled "The Silent Lie," and on the 17th day of September, 1917, it released a motion picture which was entitled "The Yankee Way." Immediately following the release of each of these pictures, they

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were extensively exploited and exhibited throughout the United States. They were known at the time as feature pictures, being ordinary five-reel pictures, designed for the principal part of an ordinary motion-picture theater program.

PAR. 5. In the course of the season of 1919-1920 respondent re-issued the old picture, "The Love Thief," and entitled it "The She Tiger"; reissued the old picture, "The Silent Lie," and entitled it "Camille of the Yukon"; and reissued the old picture, "The Yankee Way," and entitled it "Sink or Swim." It furnished each of these three old pictures so retitled to exhibitors in various States of the United States in connection with leases providing for the respondent's so-called Program Series of pictures. All other pictures furnished under such program contracts to exhibitors were new pictures.

PAR. 6. The contracts of lease in pursuance of which respondent furnished these pictures to exhibitors did not disclose that the pictures to be furnished or any of them would be reissues. The various agents, servants, and employees of respondent, in the course of negotiations leading up to and consummating contracts of lease of said three pictures between respondent and various exhibitors in the States of New Hampshire, New York, New Jersey, Michigan, Illinois, Kentucky, and Arkansas, furnished no information to such exhibitors to the effect that said pictures were reissues.

PAR. 7. Respondent furnished exhibitors with bills, posters, and other matter for use in advertising the said photoplays to the public. The advertising matter furnished exhibitors by respondent in connection with the picture "Sink or Swim" conspicuously displayed the legend "WILLIAM FOX PRESENTS GEORGE WALSH IN 'SINK OR SWIM.'" The advertising matter furnished exhibitors by respondent in connection with the picture "The She Tiger" conspicuously displayed the legend "'THE SHE TIGER' FROM THE FAMOUS NOVEL 'THE LOVE THIEF' BY N. P. NIESSEN." The advertising matter furnished exhibitors by respondent in connection with the picture "CAMILLE OF THE YUKON" conspicuously displayed the legend "'CAMILLE OF THE YUKON' BASED ON LARRY EVANS ALASKAN NOVEL 'THE SILENT LIE.'"

PAR. 8. Said advertising matter so furnished by the respondent to exhibitors in connection with the just above mentioned three pictures, and in turn, used 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.

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PAR. 9. 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 and did cause exhibitors and exhibitors' patrons, in various States of the United States including the States of New Hampshire, New York, New Jersey, Michigan, Illinois, Kentucky, and Arkansas, to believe that these reissued motion-picture photoplays were new pictures, that is, continuities not previously exhibited or exploited throughout any considerable portion of the United States.

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 complaint of the Commission, the answer of respondent, an agreed statement of facts, and briefs of counsel for the Commission and respondent, 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, Fox Film Corporation, 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 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, Fox Film Corporation, shall file with the Commission, within 60 days from the date of this order, its report in writing stating the manner and form in which this order has been conformed to.

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CARAVEL COMPANY, INC.