

Syllabus

IN THE MATTER OF

FAMOUS PLAYERS-LASKY CORPORATION, REALART PICTURES CORPORATION, THE STANLEY COMPANY OF AMERICA, STANLEY BOOKING CORPORATION, BLACK NEW ENGLAND THEATERS, INC., SOUTHERN ENTERPRISES, INC., SAENGER AMUSEMENT COMPANY, ADOLPH ZUKER, JESSE L. LASKY, JULES MASTBAUM, ALFRED S. BLACK, STEPHEN A. LYNCH, ERNEST V. RICHARDS, JR.

COMPLAINT (SYNOPSIS), FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914

Docket 835. Complaint, Aug. 30, 1921¹—Decision, July 9, 1927

Where two individuals, organizers, presidents, and dominating spirits in two of the only three corporations then engaged in the production and distribution of "feature" pictures, and constituting the leading producing concerns in the motion picture industry;

- (a) Conspired to create a combination in restraint of competition and trade in the production of motion-picture films, and to create a monopoly therein, and in pursuance of said conspiracy, which they consummated, and with the intent and effect of creating a combination of producers of feature pictures, to produce and lease full programs sufficient to use all of an exhibitor's available time, and thereby exclude such exhibitor from showing competitive films;
- (1) Entered, through their respective corporations, and along with said third corporation, into an agreement with a concern engaged exclusively in distributing pictures for its corporate distributor owners, under its well-known and established trade-mark and with unique facilities for nation-wide distribution, giving said distributing concern the exclusive right to distribute all their films, each exhibitor to receive a full program of 104 pictures to be produced and furnished by them for such purpose; with the result that they thereby created in and for themselves a complete monopoly in the production and distribution of motion-picture films;
- (2) Acquired 50 per cent of the stock of the aforesaid distributing concern, which had theretofore acquired control of its distributors;
- (3) Incorporated a holding company (authorized also to carry on all branches of the industry) to acquire and hold the stock of their two companies, of said third corporation, and of a subsidiary created by it to produce feature pictures; with the intent of perpetuating and making more effective their aforesaid conspiracy, and of creating a convenient, permanent, and efficient instrumentality for the maintenance and operation thereof; and

Where said individuals and said holding company, in pursuance of the aforesaid conspiracy,

- (4) Caused to be transferred to it all the stock of the above four corporations and their physical assets, and said corporations to be dissolved;
- (5) Caused a company incorporated by them to engage in distributing pictures in competition with the aforesaid concern, featuring popular actors

¹Amended complaint, Feb. 14, 1923.

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and actresses theretofore featured in films produced by them and distributed by said concern under their above contract, and thereafter caused the entire stock of said company and concern to be acquired by such holding company, and all of their physical assets to be transferred to it and the corporations to be dissolved;

- (6) Engaged thereafter in releasing and distributing films produced by them directly to exhibitors, and extensively advertised and held out to the trade and the general public all pictures thereafter distributed by them under one or the other, of the names of the two dissolved companies, or under a combination thereof;
- (7) Sought to induce the officers of a corporation formed to resist the aforesaid policy of leasing programs of films, and owned by exhibitors imperatively requiring freedom of choice to select high-class films only, for the high-grade theaters operated by them, to desert the service of said corporation for that of their own organization, and entered upon and pursued a settled policy of obtaining, by affiliation or otherwise, the control of the prominent and powerful men and concerns constituting said corporation, its franchise holders, and thus affiliated with themselves, employed, or otherwise secured the virtual cooperation of such franchise holders in nine cities, and territories severally adjacent thereto, including some of the largest cities in the country;
- (8) Caused a company incorporated by them to lease their films to exhibitors, to open and maintain branch offices and selling organizations wholly separate and distinct from those of their own organization, with the result that many exhibitors, contrary to their intent, exhibited films leased from said company in the mistaken belief that the same were produced or controlled by others; and

Where said holding company, under the domination of such individuals,

- (b) Adopted and maintained the aforesaid method of offering films in blocks made up of both high-grade pictures and less desirable films, and consisting of a sufficient number to occupy the available exhibition time of a theater for three months or a year, at a lump-sum price, and separately only at such prices as to make successful competition by the exhibitor impossible, foregoing its said method only in communities where all competitors refused to lease films upon such a basis; with the purpose and effect of coercing and intimidating the exhibitor into leasing films in blocks as offered, and of thereby denying him the opportunity of leasing and exhibiting other desired films of higher quality as demanded by his patrons; of excluding from the market and the industry, small, independent producers and distributors; and of lessening competition and tending to create a monopoly in the motion-picture industry; and
- (c) Adopted a progressive and increasing policy of indirectly building, buying, owning or otherwise controlling theaters, especially first-class, first-run theaters in key cities, to give to their best pictures first-run exhibitions under the most favorable conditions, to advertise and exploit the same and to create a public demand therefor by the patrons of the better theaters in adjacent territory, and make leases for their exhibition indispensable to the successful operation of such theaters; extended said program far beyond the point originally estimated by them as necessary to enable them to establish and maintain their unlawful sales policy, and to intimidate and coerce independent exhibitors as above set forth; and threatened to buy, lease, and operate theaters in competition with exhibitors

refusing to lease and exhibit their films; with the intent of perpetuating and making more effective their said distribution policy, of intimidating and coercing exhibitors into leasing their films, and of extending their dominant position as producers of feature pictures of extraordinary merit and of complete programs equal or superior to any, to dominate the entire industry; and with the result that competitors strong enough to do so necessarily adopted their aforesaid method of acquiring and operating theaters and leasing films, making it difficult for small and independent producers or distributors to enter or remain in the industry, destroying the freedom of exhibitors to select individual, acceptable films on merit, and depriving the public of the power to influence exhibitors in the choice of films, and of the benefit of continuous exhibition of meritorious and acceptable films only;

With the result that competition of producers and distributors of motion-picture films was unduly hindered, and with a dangerous tendency to create for said organization and its affiliated companies a monopoly in the motion-picture industry in the greater part of the United States:

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

Mr. William H. Fuller, Mr. Gaylord R. Hawkins, and Mr. M. A. Morrison for the Commission.

Cravath, Henderson & DeGersdorff and *Mr. Gilbert H. Montague*, of New York City, and *Mr. Joseph W. Folk*, of Washington, D. C., for Famous Players-Lasky Corporation.

Wolf, Block & Schorr, of Philadelphia, Pa., for The Stanley Co. of America, Stanley Booking Corporation and Jules E. Mastbaum.

Mr. Herman A. Mintz, of Boston, Mass., and *Cravath, Henderson & DeGersdorff*, of New York City, for Black New England Theaters, Inc.

Mr. Alfred S. Barnard, of Atlanta, Ga., and *Cravath, Henderson & DeGersdorff*, of New York City, for Southern Enterprises, Inc.

Mr. Charles Rosen and *Mr. S. L. Herold*, of New Orleans, La., for Saenger Amusement Co.

Cravath, Henderson & DeGersdorff and *Mr. E. J. Ludvig*, of New York City, and *Mr. Joseph W. Folk*, of Washington, D. C., for Adolph Zukor and Jesse L. Lasky.

Mr. Herman A. Mintz, of Boston, Mass., for Alfred S. Black.

Mr. Alfred S. Barnard, of Atlanta, Ga., for Stephen A. Lynch.

Mr. Charles Rosen, of New Orleans, La., for Ernest V. Richards, Jr.

SYNOPSIS OF COMPLAINT

Acting in the public interest, the Commission charged respondents with conspiring and confederating together to unduly hinder competition in the production, distribution and exhibition of motion-picture films in interstate and foreign commerce, and to control,

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dominate, monopolize or attempt to monopolize the motion-picture industry, in violation of the provisions of section 5 of the Federal Trade Commission Act, prohibiting the use of unfair methods of competition in interstate commerce.

The various respondents joined in the complaint were described as follows:

The Famous Players-Lasky Corporation, organized July 19, 1916, under the laws of New York, with principal office and place of business in New York City, and with branch offices in the principal cities of the United States and in foreign countries, and engaged in the business of producing, leasing, distributing and exhibiting motion-picture films throughout the United States.

Respondent Realart Pictures Corporation, which was caused to stop business and to merge with the Famous Players-Lasky Corporation under New York laws, was incorporated under the laws of Delaware and was organized or incorporated by respondents Zukor, Lasky and the Famous Players Corporation on or about May 28, 1919, as a part of the conspiracy above charged, as more fully hereinafter set forth.

The Stanley Company of America.—A holding company incorporated under the laws of Delaware, with principal office and place of business in Philadelphia, and owning all or a part of the stock of various corporations owning or controlling and operating motion pictures throughout the States of Pennsylvania, Delaware, and New Jersey and also owning all the stock of respondent Stanley Booking Corporation.

Stanley Booking Corporation.—A New York corporation with principal office and place of business in Philadelphia, engaged in booking motion pictures for theaters throughout the States of Pennsylvania, Delaware, and New Jersey.

Black New England Theaters, Inc.—A Delaware corporation with principal office and place of business in Boston and a holding company owning the stock of various corporations owning or controlling and operating motion-picture theaters in Maine, New Hampshire, Vermont, Massachusetts, Rhode Island, and Connecticut.

Southern Enterprises, Inc.—A Delaware corporation organized in the Spring of 1919 by respondent Zukor and Lasky and respondent Famous Players-Lasky Corporation (also owner of all its stock), with principal office and place of business in Atlanta, and a holding company owning all or part of the stock of various corporations owning or controlling and/or operating motion-picture theaters throughout the States of North Carolina, South Carolina, Georgia,

Florida, Alabama, Mississippi, Louisiana, Texas, Arkansas, Oklahoma, and Tennessee.

Saenger Amusement Co.—A Louisiana corporation, with principal office and place of business in New Orleans, and engaged in owning or controlling, operating and booking motion-picture theaters throughout the States of Mississippi, Louisiana, and Texas and parts of Florida and Arkansas.

Adolph Zukor, president of respondent Famous Players-Lasky Corporation since its organization, and its directing personality.

Jesse L. Lasky, vice president of said corporation, ever since its organization, in charge of production.

Jules Mastbaum, citizen of Pennsylvania and president and principal stockholder of respondent Stanley Co. of America.

Alfred S. Black, a citizen of Maine and, at the commencement of the proceeding, president of respondent Black New England Theaters, Inc.

Stephen A. Lynch, a citizen of Atlanta, Ga., and president of respondent Southern Enterprises, Inc.

Ernest V. Richards, Jr., a citizen of Louisiana and vice president, general manager and directing personality of respondent Saenger Amusement Co.

The various steps and acts charged in the complaint as a part of the alleged conspiracy follow:

Acquisition by respondents Zukor and Lasky, in 1916 through respondent Famous Players-Lasky Corporation organized in that year, of the entire stock and capital of the Jesse L. Lasky Feature Play Co., Inc., the Famous Players Film Co., and Bosworth, Inc., then among the leading producing concerns in the motion-picture industry, and the transfer of the physical assets of said three corporations to respondent Famous Players-Lasky Corporation, following which said three corporations were dissolved and ceased doing business.

Incorporation by respondents Zukor, Lasky and Famous Players-Lasky Corporation on or about July 29, 1916, under the laws of New York, of the Artercraft Pictures Corporation, which engaged in distributing motion-picture films featuring actors and actresses of great popularity, theretofore featured in films produced by the aforesaid Lasky Feature Play Co., Inc., or Famous Players Film Co., and distributed under contract between said producing companies and the Paramount Pictures Corporation, at the time the principal agency engaged exclusively in distributing and leasing motion-picture films to exhibitors throughout the United States with facilities for nationwide distribution, and advertising its business under its well-known

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and established trade-mark name "Paramount" and under a long-time contract with said Lasky Feature Play Co., Famous Players Film Co., and Bosworth, Inc., for the distribution through it exclusively of all films produced by said three corporations; distribution of the aforesaid films by such Arcraft Pictures Corporation being in competition with said Paramount Pictures Corporation.

Causing the entire stock and capital of said Paramount Pictures Corporation and said Arcraft Pictures Corporation to be acquired by the Famous Players-Lasky Corporation, and all of the physical assets of the said first two corporations to be transferred to the Famous Players-Lasky Co. and said corporations to be dissolved and to cease doing business, following which the Famous Players-Lasky Corporation, "in addition to producing motion-picture films, engaged in releasing and distributing such films directly to exhibitors, and extensively advertised and held out to the trade and the general public all pictures thereafter distributed by it as 'Paramount Pictures' or 'Arcraft Pictures' or 'Paramount-Arcraft Pictures'."

Causing said Famous Players-Lasky Corporation to inaugurate, establish and maintain a policy of affiliating with it independent producers of motion-picture films whose products were of such quality and popularity that they were in great demand, and, by its contracts for distribution with them controlling all the terms and conditions through the lease, distribution and exhibition of film of such affiliated producers, which film it nationally advertised and displayed to exhibitors of the public as "Paramount" pictures.

Holding out to the trade and general public the Realart Pictures Corporation, which said Zukor, Lasky and Famous Players-Lasky Corporation caused to be incorporated, and which engaged in distributing and leasing films produced by the Famous Players-Lasky Corporation and affiliated producers to exhibitors throughout the United States, and maintained branch offices or exchanges and selling organizations wholly separate and distinct from those of the Famous Players-Lasky Corporation, and long concealed the latter's ownership and control of it, for the purpose of deceiving exhibitors, and advertised and held itself out generally as wholly independent, for the purpose and with the effect of deceiving exhibitors who did not desire to exhibit motion pictures produced by said Zukor, Lasky or Famous Players-Lasky Corporation or their affiliations, but did so lease and exhibit its films in the belief that they were not made or controlled by said Zukor, Lasky or Famous Players-Lasky Corporation; respondents subsequently and since the filing of the complaint causing said Realart Corporation to cease business and transfer its physical

assets to the said Famous Players-Lasky Corporation and to merge therewith under the laws of New York.

In addition to charging respondents Zukor, Lasky and the Famous Players-Lasky Corporation with the acts, above set forth, pursuant to the conspiracy charged, the complaint charged all the respondents joined herein, with entering into a progressive program consistently adhered to of acquiring or controlling, in pursuance of the afore-said conspiracy, "by purchase or otherwise, motion-picture theaters throughout the United States, and more particularly first-run theaters, and of compelling and coercing exhibitors throughout the United States to book and exhibit all the motion-picture films produced or distributed by Famous Players-Lasky Corporation; and of inducing and compelling such exhibitors to book a substantial number of "block" of films by refusing to lease a given film or films, unless the exhibitors also book a substantial number or "block" of other films, the exhibition of all of which will take up either the whole or a large portion of their available exhibiting time and close their theaters to the films of producers or distributors who are competitors of said Famous Players-Lasky Corporation; and the respondents, Adolph Zukor, Jesse L. Lasky and Famous Players-Lasky Corporation procured millions of dollars to put said program in successful operation.

"As a result of the carrying out of said progressive program of acquiring or controlling first-run theaters and compelling exhibitors to book all or a substantial 'block' of its product, Famous Players-Lasky Corporation has unduly hindered and is unduly hindering competitors, in that competitor producers and/or distributors are unable to procure the first run showings for their product that are essential to the financially successful motion-picture producer as heretofore alleged; and by and through all of the acts hereinbefore alleged said Adolph Zukor, Jesse L. Lasky and Famous Players-Lasky Corporation have built up and now possess and exercise a dominating control over the motion-picture industry that has a dangerous tendency to give them a complete monopoly therein.

"As a further result thereof Famous Players-Lasky Corporation is the largest theater owner in the world, and in one week in the year 1920 more than 6,000 American theaters, or approximately one-third of all the motion-picture theaters in the United States, showed nothing but Paramount pictures, and about 67 cents of every dollar that was paid to enter motion-picture theaters was paid to enter those theaters which displayed Paramount pictures.

"In acquiring or controlling, and in attempting to acquire or control, motion-picture theaters, the respondent conspirators have

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coerced and intimidated and attempted to coerce and intimidate motion-picture theater owners or exhibitors by divers means and methods among which were the following, to wit:

"(a) Threatening to build or lease and/or operate theaters in competition with exhibitors who refused to sell or lease their houses;

"(b) Threatening to cut off or interfere with the film service of such exhibitors who refused to so sell or lease their theaters;

"(c) Secretly offering higher rentals, effective upon expiration of leases held by exhibitors who refused to sell or lease such theaters;

"(d) Temporarily reducing the price of admission charged by theaters owned or controlled by the respondents, below that charged by exhibitors who refused to sell or lease their theaters.

"In compelling or attempting to compel independent exhibitors to book and exhibit the motion-picture films produced or distributed by Famous Players-Lasky Corporation, these respondent conspirators have coerced and intimidated, and attempted to coerce and intimidate, exhibitors by various means and methods, among which are the following, to wit:

"(a) Threatening to build or lease and/or operate theaters in competition with independent exhibitors who refused to book and exhibit such films;

"(b) Interfering with the film service of such independent exhibitors and causing the cancellation of contracts for service between such exhibitors and producers;

"(c) Disparaging independent exhibitors who refused to exhibit such pictures, by means of advertisements placed in newspapers circulated throughout the territory in which such independent exhibitors' theaters were located.

"(d) Inducing, and seeking to induce, independent exhibitors who had contracts of release for the exhibition of motion-picture films produced by competitor producers, to cancel such contracts or refuse to make such contracts, by offering to give and giving such exhibitors, motion-picture films produced and distributed by Famous Players-Lasky Corporation, for nominal sums of money, or free of charge.

"And in furthering and carrying out the aforesaid conspiracy, said respondents have used various other fraudulent and unfair methods to exclude competitors from producing, distributing or exhibiting their motion-picture films."

According to the complaint, "the acts, practices, and things done as hereinbefore alleged, have unduly hindered and are now unduly hindering, the competition in interstate commerce of competing producers and distributors of motion-picture films; and said acts, practices, and programs, carried out as hereinbefore alleged, have a dan-

gerous tendency to create for said Famous Players-Lasky Corporation and its affiliated companies, a monopoly in the motion-picture industry in the greater part of the United States; all of which is in violation 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."

Upon the foregoing complaint, the Commission made the following

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 its amended complaint upon the respondents above named, charging them and each of them with violations of said act.

The respondents filed their amended answers to the said amended complaint herein through their attorneys, whereupon hearings were had before an examiner of the Federal Trade Commission. During the course of such hearings, evidence was introduced herein by the attorneys for the Commission and respondents, respectively. Such evidence was duly certified and forwarded to the Commission. Briefs have been filed herein by the attorneys for the Commission and the respondents, respectively.

This matter came on for final hearing before the Commission upon briefs and oral argument by counsel for the Commission and respondents, and the Commission having heard arguments of counsel and having duly considered the briefs filed herein and the evidence introduced herein, and being fully advised in the premises, is of the opinion that the method of competition and the acts, policy and practices of respondents, Famous Players-Lasky Corporation, Adolph Zukor and Jesse L. Lasky as alleged in the amended complaint and established by the evidence herein are in violation of, and prohibited by, said Federal Trade Commission Act. Wherefore, the Commission now makes this its report in writing as to said respondents, Famous Players-Lasky Corporation, Adolph Zukor and Jesse L. Lasky, stating herein its findings as to the facts and its conclusion thereon. The Commission finds the facts established by the evidence to be as follows:

FINDINGS AS TO FACTS

PARAGRAPH 1. The respondent Famous Players-Lasky Corporation is a corporation organized July 19, 1916, under and by virtue of the laws of the State of New York, with its principal office and place of

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business located in the City and State of New York, and with branch offices in the principal cities of the United States, and in foreign countries, engaged in the business of producing, leasing, distributing and exhibiting for profit motion-picture films throughout the United States and foreign countries, in direct competition with other persons, firms, copartnerships and corporations similarly engaged, and the respondent Adolph Zukor is now, and ever since its organization has been, the president of said corporation and its dominating personage, and the respondent Jesse L. Lasky is now, and ever since its organization has been, vice president of said corporation in charge of production.

PAR. 2. In the prosecution of its business respondent Famous Players-Lasky Corporation owns and operates studios located in the city of Los Angeles, State of California, and in New York City, State of New York, where it makes or produces motion-picture films; in the production of motion-picture films large quantities of unexposed negative stock celluloid films are shipped from other States to the studios; at the studios and on "location" scenes are photographed upon reels of negative stock celluloid film and the exposed negative stock film is developed and fixed, and at least one positive print made; the negative film is then shipped from the studios to laboratories located in the same State or in other States, from which many positive prints are made, and it is practicable and customary to print as many of the latter as may be necessary to supply the demand for the films; when the positive prints are projected through a cinematograph machine upon a screen there is then depicted what is commonly known as a motion picture. In connection with the photographing of the scenes in the studios respondent Famous Players-Lasky Corporation employs numerous actors, actresses, directors, continuity and title writers, camera men, designers and other artists and artisans, who are assembled from different States of the United States, and also causes a large amount of scenery, paraphernalia, costumes and similar stage properties to be moved and transported from different States in the United States in and to said studios. Said respondent, from its principal office in New York City, by and through correspondence, traveling salesmen, and its said branch offices or exchanges, makes and enters into contracts of lease with the owners of motion-picture theaters for the exhibition of said positive prints in said theaters throughout the United States and foreign countries. After the positive prints are produced in the laboratories as aforesaid, respondent Famous Players-Lasky Corporation causes them to be packed in metal containers, moved and transported by common carriers to its various branch offices or exchanges, and from

there to the owners of motion-picture theaters in the principal cities and towns of the United States and in foreign countries, including motion-picture theaters in the several States of the United States owned or controlled by said respondent, directly or indirectly, where they are projected through a cinematograph machine upon a screen and exhibited to the public for profit, after which they are moved and transported to other theaters in different States and countries for like 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 foreign countries, and more particularly, from different States of the United States, through other States, in and to said city and State of New York and the city of Los Angeles, State of California, and therefrom, through and into other States of the United States and foreign countries.

PAR. 3. In the motion-picture industry theaters are known as "first-run" and "repeat-run" houses, the first-run theaters being those in which occurs the initial presentation of pictures in certain generally defined territories or localities and approximately 50 per cent of the revenue from a film is derived from first-run showings within six months from the date of its release, and the remaining revenue from second and repeat runs in other theaters, extending over a period of two or three years. An "exhibitor" is one who is engaged for profit in the business of displaying motion pictures to the public. The "booking" of a motion picture is the making of a contract of lease between the producer or distributor thereof and the exhibitor, whereby the latter is given the right to make public exhibitions thereof. A picture is "released" when it has been finally perfected and placed in the hands of distributing agencies for delivery to theaters. To facilitate the delivery of motion-picture films to exhibitors, most producers have established branch offices throughout the United States and in foreign countries, known as "exchanges," where negotiations for the booking of films are conducted with exhibitors, and these exchanges are located in the principal cities in the various sales districts throughout the United States; from these "exchange" offices service is given to smaller cities and towns within the adjacent territory, and all business between exhibitors and producers or distributors is conducted by or through such "exchange" offices, and the cities wherein are located the exchange offices thereby become the keystone around which center all activities in its sales district, and they have become and in the trade are known as "key cities." The successful booking of a motion picture in a given territory is dependent largely upon its showing in

the first-run theaters in that territory, because exhibitors in adjacent territory are to a large extent governed in booking a motion picture film, by its showing in such first-run theaters, and in order to insure the successful booking of a film in a given territory, it must first have a showing in a first-run theater in that territory.

PAR. 4. Respondent The Stanley Co. of America is a Delaware corporation with its principal office and place of business in the city of Philadelphia, State of Pennsylvania, and is a holding company owning the whole or a part of the capital stock of various corporations which own or control, and operate, motion-picture theaters throughout the States of Pennsylvania, Delaware, and New Jersey, and said The Stanley Co. of America owns all of the capital stock of the respondent Stanley Booking Corporation, hereinafter named.

Stanley Booking Corporation is a New York corporation with its principal office and place of business located in the city of Philadelphia, State of Pennsylvania, and is engaged in the business of booking motion pictures for theaters throughout the States of Pennsylvania, Delaware and New Jersey.

The respondent Jules Mastbaum is a citizen of Pennsylvania and is president and the principal stockholder of the Stanley Co. of America.

Respondent Black New England Theaters, Inc., is a Delaware corporation with its principal office and place of business located in the city of Boston, State of Massachusetts, and is a holding company owning the capital stock of various corporations which own or control, and operate, motion-picture theaters throughout the States of Maine, New Hampshire, Vermont, Massachusetts, Rhode Island, and Connecticut, and the respondent Alfred S. Black, a citizen of the State of Maine, was at the time of the commencement of this proceeding its president.

Respondent Southern Enterprises, Inc., is a corporation that was organized in the spring of 1919 by the respondents Adolph Zukor and Jesse L. Lasky and Famous Players-Lasky Corporation, hereinafter named, under the laws of the State of Delaware, with its principal office and place of business located in the city of Atlanta, State of Georgia, and is a holding company owning the whole or a part of the capital stock of divers corporations which own or control, and/or operate, motion-picture theaters throughout the States of North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Louisiana, Texas, Arkansas, Oklahoma, and Tennessee, and all of the capital stock of said Southern Enterprises, Inc., is owned by respondent Famous Players-Lasky Corporation; and the respondent Stephen

A. Lynch, a citizen of the city of Atlanta, State of Georgia, is president of said Southern Enterprises, Inc.

Respondent Saenger Amusement Co. is a Louisiana corporation, with its principal office and place of business in the city of New Orleans, State of Louisiana, and is engaged in the business of owning or controlling, operating and booking, motion-picture theaters throughout the States of Mississippi, Louisiana, and Texas and parts of Florida and Arkansas, and the respondent Ernest V. Richards, jr., a citizen of the State of Louisiana, is its vice president, general manager and directing personality.

PAR. 5. The respondents Adolph Zukor, Jesse L. Lasky and Famous Players-Lasky Corporation have conspired and confederated together and from time to time with other persons unduly to hinder competition in the production, distribution and exhibition of motion-picture films in interstate and foreign commerce and to control, dominate, monopolize or attempt to monopolize the motion-picture industry.

PAR. 6. Among the leading producing concerns in the motion-picture industry in the spring of the year 1915 were Jesse L. Lasky Feature Play Co., Inc., a New York corporation, Famous Players Film Co., a Maine corporation, and Bosworth, Inc., a California corporation, all of whom were engaged in producing motion-picture films in competition with each other for lease and exhibition in all the States of the United States and in foreign countries. Paramount Pictures Corporation of New York was engaged exclusively in the business of distributing motion-picture films, and under the provisions of certain written agreements entered into on or about March 1, 1915, between it and said Jesse L. Lasky Feature Play Co., Inc., Famous Players Film Co. and Bosworth, Inc., said Paramount Pictures Corporation was given the exclusive right for a term of 25 years to, and did, distribute all motion-picture films produced by the three above-named corporations respectively, and said Jesse L. Lasky Feature Play Co., Inc., Famous Players Film Co. and Bosworth, Inc., released and distributed all motion-picture films produced by them through said Paramount Pictures Corporation. At that time said Paramount Pictures Corporation was the principal agency engaged exclusively in distributing and leasing motion-picture films to exhibitors throughout the United States that possessed facilities for nationwide distribution, and in distributing and leasing such motion-picture films advertising in connection therewith was done by the Paramount Pictures Corporation, and its trade-mark name of "Paramount Pictures" was featured and became well known and established among exhibitors and the motion-picture theater public.

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Said three corporations, to wit: Jesse L. Lasky Feature Play Co., Inc., Famous Players Film Co. and Bosworth, Inc., were engaged in the production and distribution of a certain class of motion-picture films of high literary and dramatic quality and merit, known to the trade as feature pictures, as distinguished from short subjects. Feature pictures consist of four or more reels; short subjects consist of less than four reels and are of small literary or dramatic merit. Said three corporations were the only producers of feature pictures as herein described in the United States, until the incorporation of Morosco Photo Play Co. on September 1, 1914.

Said Famous Players Film Co. was dominated by respondent Adolph Zukor, who was its organizer and president. Said Jesse L. Lasky Feature Play Co. was dominated by respondent Jesse L. Lasky, who caused it to be organized. Bosworth, Inc., was also engaged in the production of the same grade and quality of films.

Said respondents desired and purposed to, and did, create a combination of producers of feature pictures; that was to produce and offer for lease, and lease, to exhibitors full programs of motion-picture films. A program of pictures is 104 pictures available for lease and exhibition in any period of 52 weeks, or an exhibition year. The same is sufficient to use all the available exhibition time of an exhibitor during such period. Only a combination of then existing producers and distributors was able to produce and distribute a program of films, no single producer having capacity therefor. The sale of a program to exhibitors by such a combination was intended to, and necessarily did, exclude such exhibitor from leasing or exhibiting films produced or distributed by a competitor or competitors. Such sales necessarily lessen competition in the lease of films, tending to create a monopoly therein, and exclude from the market small and independent producers, and all producers of films who were not able to furnish complete programs to their patrons.

Said Famous Players Film Co., so dominated by respondent Adolph Zukor; said Jesse L. Lasky Feature Play Co. so dominated by respondent Jesse L. Lasky; and said Bosworth, Inc., conspired and confederated together to create, and did create, a combination in restraint of competition and trade in the production and distribution of motion-picture films and to create a monopoly in the production and distribution of moving-picture films in the United States and in foreign countries. In furtherance of said unlawful combination they, on May 15, 1914, entered into certain written agreements with Paramount Pictures Corporation, a corporation organized under the laws of the State of New York, for the distri-

bution for them of all films produced by them all, the total number so to be distributed constituting to each exhibitor a full program of 104 pictures, which said producers agreed to produce and furnish for said purpose. Said producers by said combination did create in and for themselves a complete monopoly for the production and distribution of feature picture films in the United States, which monopoly continued for more than one year before any competition was developed by any other producer. September 1, 1914, Morosco Photo Play Co. was incorporated under the domination of said Bosworth, Inc., for the production of feature picture films.

Said Paramount Pictures Corporation was organized May 8, 1914, by distributors of motion picture films as a National agency for the distribution of such films. The incorporators of said Paramount Co. and the owners of said corporation denominated in said business as franchise holders thereof, were nine certain corporations so engaged in distributing films. The word "films" in these findings is used at all times to mean moving-picture films to be used as above set forth in the exhibition to the public of motion pictures.

Said contracts with Paramount Pictures Corporation for the exclusive distribution of the product of said three producers were for a period of 5 years, which contract was, on March 1, 1915, superseded by a like contract for 25 years from said date.

Said Paramount Co. thereafter acquired 51 per cent of the capital stock of the nine corporations that were its own franchise holders. Thereafter, respondents Zukor and Lasky, acquired 50 per cent of the capital stock of said Paramount Co.

Respondents Zukor and Lasky in furtherance of said unlawful conspiracy and for the purpose and with the intent of perpetuating the same and making it more effective and of creating a convenient, permanent and efficient instrumentality for the maintenance and operation of said unlawful conspiracy, caused respondent, Famous Players-Lasky Corporation, to be incorporated under the laws of the State of New York on July 19, 1916. Said corporation is, by the terms of its charter, primarily a holding company organized expressly by its charter to acquire and hold the capital stock of said Famous Players Film Co. and said Jesse L. Lasky Feature Play Co. and of other domestic and foreign corporations. Said respondent corporation was, by its said charter, authorized also to carry on all branches of the motion picture industry to wit:

To produce films; to distribute them; to build, buy, own and control theaters for the exhibition of films. As a part of said original purpose of said Zukor and Lasky said new corporation was also to

acquire and hold the capital stock of said two corporations, to wit: Bosworth, Inc., and Morosco Photo Play Co.

In furtherance of said unlawful conspiracy, and to effectuate said purpose of the incorporation of respondent Famous Players-Lasky Corporation, respondents Zukor, Lasky and said corporation caused the transfer to said Famous Players-Lasky Corporation of all the capital stock of said Famous Players Film Co., of said Jesse L. Lasky Feature Play Co., of said Bosworth, Inc., and of said Morosco Photo Play Co.; caused all physical assets of said corporations to be transferred to said Famous Players-Lasky Corporation and said four corporations to be dissolved and to cease doing business. The respective dates of the events above enumerated are:

June 1, 1912.—Famous Players Film Co., Inc.

July 31, 1913.—Bosworth, Inc.

November 26, 1913.—Jesse L. Lasky Feature Play Co., Inc.

May 8, 1914.—Paramount Pictures Co., Inc.

May 15, 1914.—Contracts between Famous Players Film Co., The Lasky Corporation and Bosworth, Inc., with the Paramount Co. for the distribution by the Paramount Co. of all pictures produced by said three producers for a period of five years from August 31, 1914.

September 1, 1914.—Morosco Photo Play Co., Inc.

March 1, 1915.—Said distribution contract with the Paramount Co. extended for a period of 25 years from March 1, 1915.

May 2, 1915.—Paramount Pictures Corporation acquired 51 per cent of the capital stock of the nine corporations that were its franchise holders.

May 20, 1916.—Zukor and Lasky acquired 50 per cent of the capital stock of the Paramount Co.

July 19, 1916.—Famous Players-Lasky Corporation incorporated and acquired the stock of Famous Players Film Co. and Jesse L. Lasky Feature Play Co. Acquisition of the stock of Bosworth, Inc., and Morosco Photo Play Co. by Famous Players-Lasky Corporation was contemplated but the actual acquisition was deferred until, and consummated on, November 7, 1916.

PAR. 7. In further pursuance of the conspiracy described in paragraph 5 hereof, and as a part thereof, the respondents Adolph Zukor, Jesse L. Lasky, and Famous Players-Lasky Corporation, on or about July 29, 1916, caused to be incorporated under the laws of the State of New York the Arcraft Pictures Corporation, which immediately engaged in distributing motion picture films in competition with said Paramount Pictures Corporation, which motion-picture films featured actors and actresses who had attained great popularity with

the public, and who had theretofore been featured in motion picture films produced by said Jesse L. Lasky Feature Play Co., Inc., or said Famous Players Film Co. and distributed by said Paramount Pictures Corporation under said contract. Thereafter, to further carry out the conspiracy charged in paragraph 5 hereof, and as a part thereof, the respondents, Adolph Zukor, Jesse L. Lasky and Famous Players-Lasky Corporation caused the whole of the stock and share capital of said Paramount Pictures Corporation and said Artcraft Pictures Corporation to be acquired by said Famous Players-Lasky Corporation and all of the physical assets of each of said corporations to be transferred to said Famous Players-Lasky Corporation and said corporations to be dissolved and to cease doing business. Thereafter said Famous Players-Lasky Corporation, in addition to producing motion-picture films engaged in releasing and distributing such films directly to exhibitors, and extensively advertised and held out to the trade and the general public all pictures thereafter distributed by it as "Paramount Pictures" or "Artcraft Pictures" or "Paramount Artcraft Pictures". All subsequent acts of respondents Adolph Zukor, Jesse L. Lasky and Famous Players-Lasky Corporation, as set forth in these findings were in pursuance and furtherance of said unlawful conspiracy as found in the fifth paragraph of these findings.

PAR. 8. In March, 1917, certain 26 exhibitors of motion-picture films, who operated theaters in the several States of the United States, were operating theaters of the higher grades and qualities, seeking the patronage of the more discriminating and exacting patrons of moving-picture theaters. To maintain the high standards of their said several theaters, it was necessary for said exhibitors to lease and exhibit only films of the higher qualities and grades, and to refrain from the exhibition of films of lower qualities or which were not acceptable to their patrons. During March, 1917, said 26 exhibitors, in order to resist the said policy of leasing programs of films, as distinguished from freedom of choice to lease individual films on merit, and to meet the demands of patrons for the exhibition only of films acceptable to such patrons, organized a corporation popularly known as "First National" to be an instrumentality for the procurement of films freely chosen and leased upon individual merit. Said "First National" became and was the only factor in the national distribution of films that Mr. Zukor and Mr. Lasky regarded as at all formidable to Famous Players-Lasky Corporation.

Respondent Zukor endeavored to form a combination with First National by which the latter would produce no films, exhibit no films

other than those produced by Famous Players-Lasky Corporation, and finally, become subsidiary to, or merge with, Famous Players-Lasky Corporation. To that end, said Zukor endeavored to induce its officers to enter the service of Famous Players-Lasky Corporation, deserting First National. Failing in that he openly threatened to purchase a sufficient number of its franchises to control its action. In pursuance of such purpose, said Zukor in the fall of 1919 induced one Hulsey, reputed to be the strongest of the franchise holders in First National, to desert First National and enter employment under the control of Mr. Zukor. As a defense against said attack upon it, First National reincorporated upon a basis intended to prevent said Zukor from obtaining control of its officers and its activities. Then and thereafter, said Zukor, Lasky and Famous Players-Lasky Corporation, in pursuance of said purpose and threat, entered upon and have at all times pursued the settled policy of obtaining by affiliation, or otherwise, the control of the prominent and powerful men and corporations who constitute First National and are what are known as its franchise holders. Said respondents have thus affiliated with themselves, employed or by other means secured the virtual cooperation of the franchise holders of said First National in the following cities, controlling the territories severally adjacent thereto, to wit:

Boston, Mass., Philadelphia, Pa., Cleveland, Ohio, Chicago, Ill., Detroit, Mich., St. Louis, Mo., Des Moines, Iowa, New Orleans, La., Dallas, Tex.

PAR. 9. Respondents Adolph Zukor, Jesse L. Lasky and Famous Players-Lasky Corporation caused to be incorporated, on or about May 28, 1919, under the laws of the State of Delaware, Realart Pictures Corporation, with a capital stock of 10,000 shares without nominal or par value, of which 5,000 shares were issued to and owned by Famous Players-Lasky Corporation, and its principal office to be established in the city of New York, State of New York. Said Realart Pictures Corporation thereupon engaged in distributing and leasing, as aforesaid, to exhibitors throughout the United States, motion-picture films produced by said Famous Players-Lasky Corporation, or its said affiliated producers, and the respondents Adolph Zukor, Jesse L. Lasky, and Famous Players-Lasky Corporation caused said Realart Corporation to open and maintain branch offices or exchanges and selling organizations wholly separate and distinct from that of said Famous Players-Lasky Corporation. Many exhibitors who did not desire to lease or exhibit motion picture films produced by said Adolph Zukor, or Jesse L. Lasky, or Famous Players-Lasky Corporation, or any of their affiliations, did lease and exhibit to the

public motion-picture films leased and distributed by Realart Pictures Corporation, in the belief that the same were not made, produced or controlled by the respondents Adolph Zukor, Jesse L. Lasky, or Famous Players-Lasky Corporation. Since the date of the filing of the original complaint in this proceeding said respondents Adolph Zukor, Jesse L. Lasky and Famous Players-Lasky Corporation have caused Realart Pictures Corporation to cease doing business and to transfer all of its physical assets to Famous Players-Lasky Corporation and to merge with Famous Players-Lasky Corporation under the laws of the State of New York as in such case made and provided.

PAR. 10. On July 22, 1919, respondents Zukor, Lasky and Famous Players-Lasky Corporation, had become, long had been, and still were, the dominant power in the moving-picture industry. Said corporation produced feature picture films of high quality and merit and other films of the higher and better qualities, suitable for exhibition in the better theaters and to patrons of discriminating and exacting taste. It produced films sufficient to offer, and lease, to the exhibitors of the country complete programs. Its product comprised certain films of extraordinary merit for which there was growing imperative demand by patrons of moving-picture theaters. Its complete program was equal or superior to any complete program being offered by other distributors of films, but its program included films of lesser merit which were not suitable for exhibition in the best theaters, and for which there was little or no demand among the patrons of such theaters. To meet the demands of his patrons, an exhibitor operating a theater charging higher prices of admission and appealing to patrons of discriminating taste was compelled to exhibit such films of unusual merit and for which there had been so created a great demand, but was subject to adverse criticism by his patrons and to financial loss, when he also exhibited said films of lower qualities. To maintain the standard of his theater and the favor of his patrons, an exhibitor catering to discriminating patrons found it necessary to exhibit the better films of respondent, Famous Players-Lasky Corporation, and also the films of other producer-distributors of films, exercising therein a discriminating freedom of choice.

On July 22, 1919, the board of directors of Famous Players-Lasky Corporation under the domination of respondents Zukor and Lasky, for the purpose of modifying, perpetuating and making more effectual its said distribution policy as distinguished from the lease of individual pictures, and for the purpose of intimidating and coercing exhibitors to lease and exhibit films produced and distributed by

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Famous Players-Lasky Corporation, adopted a progressive and increasing policy of building, buying, owning or otherwise controlling theaters, especially first-class, first-run theaters in key cities to be used to give to the best picture films produced by Famous Players-Lasky Corporation first-run exhibitions under the most favorable conditions, to advertise and exploit said films, create a popular demand for their exhibition by the patrons of the theaters of the better class in territories adjacent to said several key cities, and to make leases for their exhibition indispensable to the successful operation of such class of theaters. At said time said respondents occupied a dominant position in the moving-picture industry, except the operation of theaters. It was the openly and publicly avowed purpose of said respondents, by said policy of theater ownership and operation, to dominate the entire moving-picture industry, purchasing increasing numbers of theaters below the grade of first-run theaters and coercing independent exhibitors to lease and exhibit films produced and distributed by Famous Players-Lasky Corporation.

Famous Players-Lasky Corporation adopted the fixed method of leasing, and does lease, its films under a system known in the trade as "block booking". Under such plan films are offered in "blocks" only. A block is a group of films offered as a whole. The number of films in a block is not uniform. The numbers most frequently offered are sufficient to occupy the available exhibition time of a theater for three months or for one year. Such blocks contain 13 or 26 films, or 52 or 104 films according to whether the theater changes films once or twice a week. The individual films in blocks being offered at any time are not always identical. Films are included in a block offered to an exhibitor which the agent of Famous Players-Lasky Corporation chooses for that purpose, and which he deems to be within the revenues of the exhibitor. A block is so constituted as to contain certain films which the exhibitor feels compelled to lease and exhibit and also other films of lower quality which the exhibitor does not desire to lease and exhibit and which the exhibitor considers to be unacceptable to his patrons.

Respondent Famous Players-Lasky Corporation has maintained and still maintains said unfair distribution policy. It offers to lease, and does lease, blocks of films as such, the exhibitor taking all as offered or none. If an exhibitor declines to take all, the block is successively offered to his competitors until a sale is made. As an alternative, Famous Players-Lasky Corporation sometimes offers to permit an exhibitor, who declines to lease a block, to lease less than the whole block at prices so high as to make it impossible for him successfully to compete with rival theaters, to wit: At prices arbi-

trarily fixed at from 50 to 75 per cent higher than the estimated prices of such films as parts of the block. The purpose and effect of such alternative offer is to coerce and intimidate an exhibitor into surrendering his free choice in the leasing of films and into leasing films in blocks as offered, thereby denying to such exhibitor the opportunity or privilege of leasing and exhibiting certain other films of higher qualities and which such exhibitor's patrons demand and which such exhibitor desires to exhibit. Only in case all competitors in any community refuse to lease a block of films does Famous Players-Lasky Corporation lease for use in that community the films contained in such block upon some other basis to be arrived at by negotiation between the sales agent of Famous Players-Lasky Corporation and the exhibitor.

The purpose and necessary effect of such distribution policy is to lessen competition and to tend to create a monopoly in the motion-picture industry, tending to exclude from the market and the industry small independent producers and distributors of films and denying to exhibitors freedom of choice in leasing of films.

Because of the dominant position of Famous Players-Lasky Corporation in the motion-picture industry, its methods of competition, policy and practice are necessarily followed, adopted and maintained by all competitors of Famous Players-Lasky Corporation that are strong enough to acquire and operate first-class first-run theaters to exploit their most meritorious pictures and to offer to lease, and lease, films in blocks only and in sufficient numbers to occupy the available exhibition time of exhibitors. Thereby it is made difficult for small and independent producers or distributors of films to enter into or remain in the moving-picture industry or market, or to lease individual pictures on merit. It destroys the freedom of exhibitors to choose according to their judgment and taste films for exhibition and to exhibit only films that in their opinion are meritorious and acceptable to their patrons; and the public is deprived of the power to influence exhibitors in the choice of films and of the benefit of continuous exhibition of meritorious and acceptable films only.

The principal dates of the events above set forth and certain other events closely connected therewith and constituting the current history of said unlawful combination and the means adopted from time to time for its accomplishment are as follows:

July 29, 1916.—Arctcraft Pictures Corporation, Inc.

December —, 1916.—The residue of the capital stock of Paramount Pictures Corporation acquired by Famous Players-Lasky Corporation.

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December 4, 1916.—Famous Players-Lasky Corporation acquire the remaining 49 per cent of the capital stock of the nine corporations that were the franchise holders of Paramount Pictures Corporation.

April 29, 1917.—Contract between Paramount Pictures Corporation and S. A. Lynch Enterprises, Inc., giving latter exclusive 20-year franchise to distribute Paramount pictures in 11 Southern States.

December 28, 1917.—Bosworth, Inc., Jesse L. Lasky Feature Play Co., Famous Players Film Co., Paramount Pictures Corporation, Artcraft Pictures Corporation, Morosco Photo Play Co. and Cardinal Film Corporation merged into Famous Players-Lasky Corporation. From this date forward Famous Players-Lasky Corporation has carried on all branches of the moving-picture industry.

April 18, 1919.—Famous Players-Lasky Corporation acquired one-half of the capital stock of New York & Pacific Coast Amusement Co. operating Grauman's million-dollar theater in Los Angeles, Calif.

April 30, 1919.—Contract between Famous Players-Lasky Corporation and S. A. Lynch Enterprises, Inc., pursuant to which Southern Enterprises, Inc., was incorporated. Famous Players-Lasky Corporation acquired 50 per cent of its capital stock and S. A. Lynch Enterprises, Inc., the other 50 per cent.

May 7, 1919.—Famous Players-Lasky Corporation acquired 58 per cent of the capital stock of the companies leasing the Rialto and Rivoli Theaters in New York City.

May 28, 1919.—Realart Pictures Corporation incorporated.

June 12, 1919.—Contract between Famous Players-Lasky Corporation and Southern Enterprises, Inc., granting Southern Enterprises, Inc., a franchise to distribute Paramount pictures in the 11 Southern States for a period of 25 years from September 1, 1919.

June 25, 1919.—Famous Players-Lasky Corporation, through a subsidiary corporation acquired a plot of ground in St. Louis upon which it built the Missouri Theater, which opened November 6, 1920.

August 1, 1919.—Famous Players-Lasky Corporation acquired a \$2,000,000 interest in Stanley Co. of America.

September 24, 1919.—Famous Players-Lasky Corporation acquired one-half the capital stock of Mountain States Theater Corporation operating two theaters in Denver, Colo.

December 1, 1919.—Famous Players-Lasky Corporation at this date held the whole or portions of the capital stock of eighteen different existing corporations engaged in the motion-picture industry.

December 27, 1919.—Famous Players-Lasky Corporation acquired the remaining 50 per cent of Southern Enterprises, Inc.

January 27, 1920.—Contract between Famous Players-Lasky Corporation and Alfred S. Black by which Black New England Theaters, Inc., was incorporated; half of the stock of which was taken by Famous Players-Lasky Corporation and half by Alfred S. Black. Black New England Theaters, Inc., was granted a franchise to distribute Paramount pictures in New England.

February 5, 1920.—Acquisition of 7,500 shares of first preferred stock of Famous Players Canadian Corporation, Ltd., and 65,064 shares out of 75,000 shares of its common stock.

March 4, 1920.—Contract whereby Famous Players-Lasky Corporation agreed to take one-half interest in the theaters in San Francisco operated by H. L. Rothchild.

June 22, 1920.—Purchase of 40 per cent of the common stock of respondent Saenger Amusement Co. by Georgia Enterprises, Inc., a subsidiary corporation owned by Southern Enterprises, Inc.

June 17, 1920.—Famous Players-Lasky Corporation acquired the remaining 50 per cent of the capital stock of Black New England Theaters, Inc.

July 20, 1920.—Contract between Famous Players-Lasky Corporation and Wm. H. Gray, by which Gray was given the management of New England Theaters in which Famous Players-Lasky Corporation was interested.

December 29, 1923.—Georgia Enterprises, Inc., subsidiary to Southern Enterprises, Inc., disposed of its 40 per cent of the common stock of respondent Saenger Amusement Co.

At the time of said formal adoption of said progressive program by Famous Players-Lasky Corporation, and in the public announcement thereof it was estimated that the ownership of 50 first-class first-run theaters in wisely selected key cities would be sufficient to enable Famous Players-Lasky Corporation successfully to establish and maintain its said unlawful sales policy, and to intimidate and coerce independent exhibitors to lease and exhibit the blocks of films so to be offered by Famous Players-Lasky Corporation. The acquisition of said 50 first-class first-run theaters was the original intention and plan of Famous Players-Lasky Corporation. In the execution of said plan its scope was continually broadened until on June 30, 1926, Famous Players-Lasky Corporation had interests in 368 theaters in the United States, in 332 of which feature pictures were shown. In acquiring theaters Famous Players-Lasky Corporation did not, and does not, take title thereto in the name of said corporation but obtains ownership and control thereof by purchasing the whole or a part of the capital stock of a corporation that owns such theater, or by causing title to a theater to be vested in a corporation,

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usually in a corporation created for that purpose alone. Famous Players-Lasky Corporation procures and owns all or part of the capital stock of said corporation so holding title to such theater and exercises ownership and control thereof in its capacity as a holding company. On June 30, 1926, the interests of Famous Players-Lasky Corporation in said 368 theaters were as follows:

In 128, 100 per cent; in 13, more than 50 per cent and less than 100 per cent; in 128, exactly 50 per cent; in 99, less than 50 per cent.

Interests in 69 of said theaters were acquired by a contract dated May 20, 1926, with the representatives of the holders of the voting trust certificates of the common stock of the Balaban & Katz Corporation, holder in the city of Chicago of the franchise of First National. This contract provides that respondent shall purchase on October 15, 1926, a minimum of 51 per cent and not to exceed 66 $\frac{2}{3}$ per cent of the outstanding capital stock of said Balaban & Katz Corporation, which owns interests in said 69 theaters, 42 of which are located in Chicago and 27 in other cities in Illinois. Said Balaban & Katz Corporation had in force a contract by the terms of which said Balaban & Katz Corporation was to acquire a one-half interest in five first-run theaters in the city of Detroit, the other half interest to be held by one, Kunsky, the holder of the First National franchise in the city of Detroit.

By said methods and means so employed, Famous Players-Lasky Corporation has unduly hindered, and is unduly hindering competitors, lessening competition, and restraining trade in the motion-picture industry, and has achieved a dominant position in the moving-picture industry, with a dangerous tendency toward the creation of a monopoly therein in the several parts of the United States.

In the following cities the Famous Players-Lasky Corporation directly or through subsidiaries has from time to time acquired and enjoyed the control of all or nearly all of the first-class moving-picture theaters, including first-run theaters:

Jacksonville, Fla., Miami, Fla., Tampa, Fla., Dallas, Tex., and Philadelphia, Pa.

In compelling or attempting to compel independent exhibitors to lease and exhibit motion-picture films produced or distributed by it, Famous Players-Lasky Corporation has made use of various means and methods among which are the following, to wit: Building, buying or leasing and operating, or threatening to build, buy or lease and operate, theaters in competition with independent exhibitors who refuse to lease and exhibit the films produced and distributed by Famous Players-Lasky Corporation.

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PAR. 11. The acts, practices and things done as hereinbefore set forth, have unduly hindered and are now unduly hindering, the competition in interstate commerce of competing producers and distributors of motion-picture films; and said acts, practices, and programs, carried out as hereinbefore set forth have a dangerous tendency to create for said Famous Players-Lasky Corporation and its affiliated companies, a monopoly in the motion-picture industry in the greater part of the United States; all of which is in violation 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.

CONCLUSION

The respondents, Adolph Zukor, Jesse L. Lasky and Famous Players-Lasky Corporation, by reason of the facts set out in the foregoing findings, have been and are using unfair methods of competition in commerce, in violation of the provisions contained in 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.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the amended complaint of the Commission, the amended answers of respondents, the testimony and documentary evidence offered and received and the arguments of counsel for the respective parties herein, and the Commission having made its findings as to the facts and its conclusion that the respondents have 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," therefore,

It is now ordered, That respondents, Adolph Zukor, Jesse L. Lasky and Famous Players-Lasky Corporation, and each and all of said respondents, their officers, directors, agents, representatives, and employees cease and desist:

1. From continuing in force, recognizing, complying with, carrying into effect or enforcing, or attempting to comply with, carry into effect or enforce the conspiracy heretofore made or entered into by and among the respondents or any of them, or by and among the respondents or any of them and any other person or persons, for the purpose of lessening and restraining competition, and restraining trade or commerce among the several States, or with foreign

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nations, in the business of producing, distributing and exhibiting motion-picture films for profit or the business of producing and distributing such films, and from making or entering into any like conspiracy among themselves or any of them, or among themselves or any of them and any other person or persons, for any of the purposes above set forth and enumerated in this paragraph of this order.

2. From leasing or offering to lease for exhibition in a theater or theaters motion-picture films in a block or group of two or more films at a designated lump-sum price for the entire block or group only and requiring the exhibitor to lease all such films or be permitted to lease none; and from leasing or offering to lease for exhibition such motion-picture films in a block or group of two or more at a designated lump-sum price for the entire block or group and at separate and several prices for separate and several films, or for a number or numbers thereof less than the total number, which total or lump-sum price and separate and several prices shall bear to each other such relation as to operate as an unreasonable restraint upon the freedom of an exhibitor to select and lease for use and exhibition only such film or films of such block or group as he may desire and prefer to procure for exhibition; or shall bear such relation to each other as to tend to require an exhibitor to lease such entire block or group or forego the lease of any portion or portions thereof; or shall bear such relation to each other that the effect of such proposed contract for the lease of such films may be substantially to lessen competition or tend to create a monopoly in any part of the certain line of commerce among the several States, or with foreign nations, involved in said proposed sale, to wit: The business of the production, distribution and exhibition of motion-picture films to the public, or the business of production and distribution, or of production or distribution of moving-picture films for public exhibition.

3. From building, buying, leasing or otherwise acquiring, or threatening so to do, any theater building or buildings or theater or theaters, for the purpose and with the intent or with the effect of intimidating or coercing an exhibitor or exhibitors of motion-picture films to lease or book and exhibit motion-picture films produced or offered for lease or leased by respondent Famous Players-Lasky Corporation.

It is further ordered, That the said respondents, within 60 days from and after the date of the service upon them of this order, shall file with the Commission a report or reports in writing setting forth in detail the manner and form in which they are complying and have complied with the order to cease and desist hereinabove set forth.

It is further ordered, That the charges in the complaint herein as against the respondents, Realart Pictures Corporation, The Stanley Co. of America, Stanley Booking Corporation, Black New England Theaters, Inc., Southern Enterprises, Inc., Saenger Amusement Co., Jules Mastbaum, Alfred S. Black, Stephen A. Lynch and Ernest V. Richards, jr., be, and the same are, hereby dismissed.

It is further ordered, That so much of the charges in the complaint herein as against the respondents, Adolph Zukor, Jesse L. Lasky and Famous Players-Lasky Corporation as are not embraced in the findings of fact heretofore made by the Commission in this cause, or in the above and foregoing order to cease and desist, be, and the same are, hereby dismissed.

By the Commission: Commissioner Nugent concurring as to paragraphs 1, 2, 3, and 4 hereof and dissenting as to paragraphs 5 and 6 hereof.*

*It is presumed that Commissioner Nugent referred, as to his dissent in this paragraph, to the two paragraphs immediately preceding, dismissing charges of the complaint as therein specified, the paragraphs in question being the fifth and sixth paragraphs of the order, though not numbered in the order as were paragraphs 1, 2, and 3.

Complaint

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IN THE MATTER OF

DAVID JACOBY AND MORRIS GOTTSEGEN, PARTNERS,
DOING BUSINESS UNDER THE TRADE NAMES AND
STYLES, MILLS SILVER WORKS, AND MILLS SALES
COMPANY

COMPLAINT (SYNOPSIS), FINDINGS, AND ORDER IN REGARD TO THE ALLEGED
VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914

Docket 1440. Complaint, Mar. 1, 1927—Decision, July 21, 1927

Where a firm engaged as jobbers in the sale of merchandise of sundry kinds, and doing no manufacturing,

- (a) Used the trade name Mills Silver Works on their letterheads, billheads, invoices and other trade literature and in their catalogues and advertisements, together with such statements as "Manufacturers of Silver-plated Hollow-Ware" and "Importers and Manufacturers", with the intent and effect of misleading and deceiving customers into believing them to be manufacturers and that in dealing with them they were therefore obtaining better goods at cheaper prices than when purchasing from a jobber; and in their catalogues
- (b) Falsely described pyrolin or celluloid combs, ivory colored clocks, wood shaving brush handles painted black to resemble ebony, and bill folds made of some material imitating seal, as pyrolin ivory, and amber and shell, ivory, ebony wood, and American pin seal, respectively; with the capacity and tendency to deceive the purchasing public and induce them to purchase the articles thus described, in reliance upon the truth and accuracy of such description:

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

Mr. Alfred M. Craven for the Commission.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondents, partners engaged in the sale of merchandise of sundry sorts and kinds at wholesale to retailers in various States, doing no manufacturing but purchasing the merchandise dealt in by them from the manufacturers and reselling the same at a profit, and with principal place of business in New York City, with using misleading trade name, misrepresenting business status, and advertising falsely or misleadingly in violation of the provisions of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce.