

IN THE MATTER OF

CONGO PICTURES, LTD., NATHANIEL H. SPITZER, INDIVIDUALLY, AND AS PRESIDENT OF CONGO PICTURES, LTD., WILLIAM ALEXANDER, INDIVIDUALLY, AND AS VICE PRESIDENT OF CONGO PICTURES, LTD., WILLIAM SYDNEY CAMPBELL, INDIVIDUALLY, AND AS SECRETARY OF CONGO PICTURES, LTD., HAROLD D. SMITH, AN INDIVIDUAL

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

Docket 1938. Complaint, Apr. 8, 1931—Decision, Mar. 27, 1933

Where a corporation created to exploit a motion-picture film as an authentic record of an African scientific expedition, and officers and organizers of said corporation; in offering and advertising said film, which (1) was created by said organizers through acquisition and merging of films theretofore made, and depicting authentic scenes of African exploration and travel with film made under their direction in or near Los Angeles, (2) displayed orang-utans for the gorillas purportedly shown, and American negro women and children for the "wild" and "strange" women, children, and pygmies ostensibly portrayed in their native Africa by the film in question, (3) made use of actors, including one in the skin of a gorilla, to depict fictitious, fanciful, and fantastic happenings inserted by them, and of a turtle, made up with wings, scales, and a long tail to portray a newly discovered animal, and (4) was called "Ingagi," falsely asserted African name for Gorilla,

Referred to said film as the "Belgian Congo Picture * * *, the amazing camera captures of the Royal expedition into the heart of Africa headed by Sir Hubert Winstead, F.R.G.S.", "noted anthropologist" and "intrepid big game hunter," and as "an authentic incontestable celluloid document showing the sacrifice of a living woman to gorilla hordes * * *", "an authentic record of African adventure. The spectacular sensational real adventure film made with untold difficulties in the heart of equatorial Africa", "a production of actual experiences", "photographed under the most unbelievable difficulties and dangers", and described the film as recording the expedition of "Sir Hubert Winstead, F.A.S.", and "Captain Daniel Swayne", a young American big game hunter and "collector of museum specimens" into "the heart of the Congo", into the gorilla country, "in the vicinity of Burunga, in the mountains, where they encountered not only gorillas in plenty, but wild women, queer children that seemed to be the offspring of some unholy alliance * * *, the most thrilling, awe inspiring and dramatic record of actual experience in the heart of equatorial Africa ever made * * *", etc., along with the comment "Real adventures make fiction seem tame", and reference to aforesaid strange "new" beast, discovered and named Tortadillo, due to resemblance to a cross between a tortoise and an Armadillo; and

Included with the picture a descriptive sound lecture, supposedly in the language, according to accompanying foreword, of "Sir Hubert Winstead, F.A.S., scientist and big game hunter", who, along with "Captain Daniel Swayne, an American hunter", "headed a safari which penetrated to the depths of the Belgian Congo" and supplied the camera record ostensibly displayed in the film in question, in which sound lecture the supposed Sir Hubert comments on the various scenes disclosed, including charge of a wounded lion, injuries inflicted, discovery by "Captain Swayne" of the Tortadillo, glimpses of pygmies, wild women accompanied by giant "Ingagi", account of a strange looking child seemingly more ape than human, of the gorilla's attempted carrying away of the native woman offered as an annual tribal sacrifice to the "Ingagi", and its slaying, followed by a glimpse of "one of those queer half human women", who "gazed upon the dead monster * * * seemingly unable to comprehend" and, "catching the click of the camera, fled into the jungle";

Notwithstanding fact that characters of "Sir Hubert" and "Captain Swayne", their supposed expedition and their aforesaid, asserted extraordinary adventures and sights were fictitious and said film, offered not as fiction, but as an authentic depiction of an African expedition, exploration and big game hunt and faithful record of its happenings and events, (a) was made as hereinabove indicated, with many jungle scenes taken in a Los Angeles Zoo, and with the part of the charging lion taken by a tame animal frequently used for motion-picture purposes, and (b) displayed as part of asserted authentic African scenes, animals and plants neither indigenous to, nor found in said country;

With intent and effect of misleading prospective and actual attendants at public exhibitions of film in question, inducing exhibitors to lease and exhibit said picture, and persons to attend exhibitions thereof, who would not otherwise have done so, and of misleading and deceiving the public into paying for admission to theatres displaying said film in the erroneous belief that picture in question constituted an authentic pictorial record of an actual expedition into Africa, participated in as aforesaid and displaying pictures of actual animals and persons taken in said country; and

With further effect of diverting trade to said corporation and individuals and to their lessees from competing producers or lessors of motion pictures and their lessees or exhibitors, and with tendency to discredit and cause loss of public confidence in travel and educational motion pictures, to the detriment and injury of competitors selling such pictures in interstate commerce through truthful representations:

Held, That such acts and practices, under the circumstances set forth, were to the prejudice of the public and competitors and constituted unfair methods of competition in interstate commerce.

Mr. G. Ed. Rowland for the Commission.

Phillips & Nizer, of New York City, for respondents.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent company, a California corporation organized to distribute

a certain film in interstate commerce to motion picture exhibitors of the United States, and with office and principal place of business in Hollywood, and four individuals, incorporators of said corporation, and, in the case of three of their number, president, vice president, and secretary thereof, with advertising falsely or misleadingly as to history and nature of product, in violation of the provisions of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce.

Respondents, as charged, with intent and effect of misleading the public, and causing members thereof to pay admission prices to theaters exhibiting said film, represented the same (by them titled "Ingagi", falsely asserted native name for the gorilla), as an authentic portrayal of a scientific expedition into the heart of Africa, in the gorilla country, headed by "Sir Hubert Winstead, F.A.S., noted anthropologist of London and Captain Daniel Swayne, big game hunter", and in their advertisements in newspapers and elsewhere and in their display advertising and in the film itself, and in the sound lecture accompanying same and commenting thereon and purporting to be remarks of the aforesaid Sir Hubert, referred to and displayed or purported to display wild women who consorted with gorillas, annual tribal sacrifice of a native woman to the gorillas, half-breed children or "off-springs of unholy alliances", discovery of a strange animal representing or resembling a cross between a tortoise and an armadillo (and accordingly by them named the tortadillo), conflicts between wild beasts, etc., and queried, in connection with "discoveries" of and references to "wild women", etc., whether the "missing link" had at last been found and set forth in advertising scenes not portrayed in the film itself.

The facts were that "Sir Hubert Winstead" and the asserted expedition were fictitious, said film as a whole was not an authentic depiction of African travel, but was composed of some film displaying authentic depictions of African travel, made long theretofore, and purchased by them from film libraries or other sources, together with film made in or near Los Angeles under their supervision, in which were displayed the sensational scenes and happenings described and featured, as above suggested, and in which the roles of the "wild women" and pygmies, and half-breed children were taken by American negroes prepared for the parts, roles of gorillas were supplied by chimpanzees and orang-utans, and, in the case of the native woman offered as a tribal sacrifice, by a man in the skin of a gorilla, and animals from the local zoo, and tame lions were used for wild animal scenes depicted, and life neither indigenous to, nor found in Africa, was displayed.

Such statements and representations, circulated and distributed by respondents in interstate commerce, are "false, fraudulent, deceptive and misleading, and have the tendency and capacity to, and do, mislead and deceive exhibitors owning and operating theaters where motion pictures are shown, and the public, and cause said exhibitors to lease the said film "Ingagi", and exhibit it to the public in their said theaters, in the belief that the statements and representations are true, and that the said film is in fact an authentic picture of African travel and adventure, and to cause members of the public to pay admission prices to see the said film, in motion picture theaters, relying on the truth of said statements and representations", and such false, fraudulent, deceptive and misleading representations and statements with reference to said motion picture film, as alleged, have tended to divert and have diverted trade from competitors, of whom some "take motion pictures in Africa, and other foreign countries, and distribute and lease such films in interstate commerce to theaters throughout the United States, to be exhibited to the public", and said alleged acts and practices of respondents, as charged, are all to the prejudice of the public and competitors, and constitute unfair methods of competition in commerce within the intent and meaning of section 5.

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 a complaint upon the respondents, Congo Pictures, Ltd., a corporation, Nathaniel H. Spitzer, individually, and as president of Congo Pictures, Ltd., William Alexander, individually, and as vice president of Congo Pictures, Ltd., William Sydney Campbell, individually, and as secretary of Congo Pictures, Ltd., and Harold D. Smith, an individual, charging them with unfair methods of competition in commerce in violation of the provisions of section 5 of said act.

Respondents having entered their appearance through their attorney, and having filed their answer to said complaint, a stipulation as to the facts was agreed upon by and between respondents and the chief counsel of the Commission, wherein it was stipulated and agreed that the facts therein stated may be taken as the facts in the proceeding before the Federal Trade Commission, and in lieu of testimony in support of the charges stated in the complaint, or in

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opposition thereto, and that the Commission may proceed further upon said statement of facts to make its report stating its findings as to the facts (including inferences which it may draw from the said stipulated facts) and conclusion, and enter its order disposing of the proceeding.

Thereupon, this proceeding came on for final hearing, and the Commission having duly considered the record and being fully advised in the premises, makes this its report, stating its findings as to the facts and conclusions drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Congo Pictures, Ltd., is a corporation organized under the laws of the State of California in 1929, having its office and principal place of business at 1105 N. Western Avenue, in the city of Los Angeles, State of California, and a New York office located at 729 Seventh Avenue, in the city of New York, State of New York.

Respondents Nathaniel H. Spitzer, William Alexander, William Sydney Campbell, and Harold D. Smith are the incorporators of respondent, Congo Pictures, Ltd., and the three first named are and have been president, vice president, and secretary of said respondent corporation since its organization.

PAR. 2. The respondents above named are and have been, during several years last past, engaged in the business of leasing for exhibition purposes in the theaters of the United States, a motion picture film named and titled "Ingagi". In the course and conduct of said business, said respondents have caused positive prints of said motion picture to be made, and have distributed said positive prints from their principal office and place of business in the city of Los Angeles, State of California through and into the various States of the United States to certain persons, partnerships, and corporations who obtained from respondents the rights to the distribution of said motion picture film in certain defined territories and said latter persons, partnerships, and corporations leased said motion picture film to theaters located in their said territories for exhibition to the public.

In the course and conduct of such business respondents are in competition with other individuals, partnerships, and corporations engaged in the manufacture and leasing of motion picture films and in the distribution of the same in interstate commerce for exhibition to the public in theaters throughout the United States.

PAR. 3. Respondent, Congo Pictures, Ltd., was organized by the individual respondents for the purpose of distributing said motion

picture film "Ingagi" in interstate commerce to the motion picture exhibitors of the United States for exhibition to the public. State rights to distribute the film in some territories were sold by respondent, Congo Pictures, Ltd., and in other territories the said film was distributed directly by said respondent, Congo Pictures, Ltd. The said film "Ingagi" has been extensively shown in theaters in cities and towns throughout the United States.

PAR. 4. In 1929 respondents Nathaniel Spitzer, William Alexander, William Sydney Campbell, and Harold D. Smith obtained from film libraries and other sources authentic films depicting scenes of African explorations and travel, including a film named and titled "Heart of Africa", which was a film containing moving picture scenes of a trip in 1914 and 1915 in and through parts of British East Africa (Tanganyika) by an expedition organized and headed by Lady Grace E. Mackenzie, consisting of at least 20,000 feet of film.

Said respondents used the authentic films of African travel thus obtained as a part of said motion picture film "Ingagi", and added thereto certain scenes taken in and about the city of Los Angeles, Calif. The said scenes taken in and about the city of Los Angeles purported to depict the pygmies of Africa in their native land, native African women, gorillas, children alleged to be half-human and half-ape, the annual sacrifice by a tribe of African natives of a negro woman to gorillas and her capture by said gorillas, an animal alleged to be a new and previously unknown species, and other scenes purporting to show authentic African scenes. The aforesaid scenes made in and about Los Angeles, together with the authentic scenes of African travel and life, obtained by respondents from film libraries and other sources, were cut, assembled, and made into a complete continuous motion picture film which was titled "Ingagi". There was added to and incorporated in said film a descriptive sound lecture, alleged to be given by one Sir Hubert Winstead, F.A.S., F.R.G.S., who was described as a noted anthropologist of London, England.

PAR. 5. In the course and conduct of their business, as set forth in paragraph 2 herein, and as part of the exploitation to the public of said motion picture film "Ingagi", respondents, to aid in soliciting the lease and distribution of the said film in interstate commerce, have prepared for and caused to be inserted in newspapers and other publications having general circulation between and among the various States of the United States, advertising copy, consisting of pictures, newspaper reading matter, display advertising, and other literature. Said respondents have distributed and circulated

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the said advertising copy and other advertising literature in interstate commerce to State rights' distributors who acquired the distribution rights of said film in their respective territories, and have used said advertising copy and other advertising literature in the exploitation of said film in territories in which said respondent, Congo Pictures, Ltd., distributed said film. The advertising copy and other advertising literature hereinbefore described was supplied to and used by the motion picture exhibitors in whose theaters the said film "Ingagi" was shown, both in local newspaper advertisements and in lobby displays in said theaters.

Among the statements and representations made by respondents in the advertising copy and newspaper advertising literature prepared by them and supplied to State rights' distributors for use by exhibitors in advertising the said picture to the public, and supplied by respondents to exhibitors in territories in which respondents distributed said film, for use in advertising the said picture to the public, were the following:

Nothing Like It Ever Seen Before
The Belgian Congo Picture with the New Slant
The Amazing Camera Captures of the Royal
Expedition into the Heart of Africa
Headed by Sir Hubert Winstead, F.R.G.S.

* * * * *

GORILLAS, WILD WOMEN! IN SHOTS UNBELIEVABLE

An authentic incontestable Celluloid
Document Showing the Sacrifice of a
Living Woman to Gorilla Hordes!
The Term for Gorilla in the African Tongue is
"INGAGI"

* * * * *

Congo Pictures, Ltd.
U.S. Headquarters, 1105 N. Western Ave., Hollywood, Calif.
N.Y. Representative—William Alexander—Hotel Astor

"On this page appear a number of advertisements for newspapers which have been prepared for you by experts. We advise you to use as much newspaper space as possible because its value has been tested and proved time and again. You've got a great picture. Tell the public about it and pack your theatre."

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"These newspaper advertising mats are supplied to you at cost price because we want you to make free use of them. You can't go wrong in the use of these prepared ads because they are business getters."

The Wonder Film "INGAGI" (Gorilla)

See The Gorilla Hunt and Finding of Strange Creatures

Apparently Half Ape—Half Human. * * *

A Million Thrills—An Authentic Record of African Adventure

The Spectacular, Sensational Real Adventure Film

Made with untold Difficulties in the Heart of Equatorial Africa

INGAGI

Has the Secret of the Missing Link been discovered?

"INGAGI"

"GORILLA"

The Film of a

Thousand Wonders!

An Amazing Record of Authentic

African Adventure

"Sir Hubert Winstead, F.A.S., together with Capt. Daniel Swayne, a young American big-game hunter, penetrated to the heart of the Congo—into the gorilla country, in fact, which is in the vicinity of Burunga, in the mountains—and there encountered not only gorillas in plenty but wild women, queer children that seemed to be the offspring of some unholy alliance and finally came upon a tribe very low in the scale of intelligence which had a yearly custom of giving a woman to the apes! Unbelievable as it seems, the record has been obtained and is the terrific and smashing climax of the big game hunt picture, 'Ingagi'."

"Congo Pictures, Ltd., is sponsoring the film which was many, many months in the making, and is in eight reels—the most thrilling, awe-inspiring and dramatic record of actual experience in the heart of equatorial Africa, ever made. * * * The picture has been carefully assembled and edited by William J. Campbell from the thousands upon thousands of feet of film brought back from the jungle."

Real Adventures Made Fiction Seem Tame

"Sir Hubert Winstead, F.A.S., eminent anthropologist, hunter and explorer, of London, England, and Captain Daniel Swayne, an American hunter and museum collector, together with Ed Joyce, an intrepid cameraman, and a big safari, started from Nairobi, Africa, many, many months ago and penetrated to the Gorilla Country which

lies in the Belgian Congo and is among the wildest and least known spots in the Dark Continent."

"The record of their experiences is to be seen in this new film, presented by Congo Pictures, Ltd. * * *

"Take the fabled 'missing link!' Perhaps the Scopes trial might have had a different aspect had this picture been in existence at the time. For Sir Hubert believes he has found the missing link. They encountered a colony of strange creatures apparently half-ape, half-human, captured a child that may be a half-breed and saw numbers of what were apparently wild women in company at times with gorillas!

"Hard to believe—but the picture is a record that seems indisputable."

Strange, Unknown Animal is

Found in Africa

Shown in New Film "Ingagi"

"Ever see a Tortadillo? Do you ever hope to see one? If so, it's a forlorn hope, because they are decidedly scarce and when found are too venomous to handle. The first one ever seen on the screen will be visible in 'Ingagi', the startling African game hunt picture * * *

"Capt. Swayne came upon the strange beast, which looked like a cross between a tortoise and an armadillo. It seemed harmless enough and was handled carelessly by the scientists and his companions. Then a dog smelled of it and quickly the creature snapped, catching the dog's ear. In sixty seconds the canine was dead!

"After that the beast was given a wide berth. Sir Hubert dubbed it 'Tortadillo'—a combination of tortoise and armadillo—but so far its exact genus is a matter of doubt. It will be carefully examined by experts in London, for they succeeded in bringing one of the animals—or reptiles—home alive.

"'Ingagi' is an amazing picture presented by Congo Pictures, Ltd. It is a production of actual experiences and photographed under the most unbelievable difficulties and dangers. As an educational feature or as sheer entertainment it thoroughly qualifies. Sound effects are supplied to enhance the interest.

"Sir Hubert Winstead, F.A.S., noted anthropologist and also an intrepid big game hunter; with Capt. Daniel Swayne, a young American hunter, and collector of museum specimens, headed the safari whose adventures are seen in 'Ingagi' * * *

"Sir Hubert, a bluff, hearty, and instinctively kind-hearted person, is one of the best informed men on the subject of big game in the world. He is also a student of the anthropoids, such as the gorilla,

and in this picture are recorded such exciting scenes as the capture of a big bull gorilla, and the discovery of creatures apparently half-ape, half-human!"

In a communication headed "To The Exhibitor", distributed by respondents, are the following statements, among others:

There have been many animal pictures, many big game hunt films, many productions dealing with adventure in Africa and other parts of the world. But—

There has never been another picture like "Ingagi."

In this press sheet you have been supplied with newspaper reading matter of every description, samples of news mats, advertisement mats, and so on. This material is for your use in "putting over" this picture, and we hope you will make good use of it.

But above all, you must realize what you have in "Ingagi"—it is no ordinary picture. It is a record of travel, of adventure in the heart of Equatorial Africa * * * the discovery of creatures apparently half-human, half-ape, in the heart of the Gorilla country * * *

* * * Here is something you can exploit like a "house-a-fire." You can bill the town like a circus. You can tell your patrons that here is a thriller which has the imaginary romances of the screen backed off the canvas. * * *

Yours for success,

CONGO PICTURES, Ltd.

PAR. 6. At the time the motion-picture film "Ingagi" was cut, assembled, and made into a continuous motion-picture film, as described in paragraph 4 herein, there was added to and incorporated in said film a descriptive sound lecture, claimed to be delivered by one Sir Hubert Winstead, who was represented by respondents as being an eminent anthropologist, fellow of the Anthropological Society, noted scientist, and big-game hunter. Said sound lecture included a "Foreword", and purported to be a description of the scenes in the said film "Ingagi", and was delivered during the showing of the film.

The "Foreword" to the sound lecture is as follows:

In the Spring of 1926, Sir Hubert Winstead, F.A.S., scientist and big-game hunter, headed a safari which penetrated to the depths of the Belgian Congo. The camera record of this adventure is here presented under the title "Ingagi", an African word signifying gorilla. After many terrific encounters with ferocious beasts of the jungle and plain, the expedition reached the gorilla country where opportunity was found to record the life of the giant anthropoids in their native habitat.

Various strange tales were heard from natives, regarding the big apes, some to the effect that they occasionally attacked human beings and again, lived peacefully with their human brethren of certain remote tribes. While unable to obtain concrete proof of the more startling legends, the expedition nevertheless secured material for the most amazing motion picture ever presented.

During three years occupied in making this picture, Sir Hubert was afforded invaluable aid by Captain Daniel Swayne, an American hunter, and a corps of

expert cameramen. Daily, the adventurers risked their lives in efforts to obtain results never before achieved. That they were successful, the following record proves. It is with regret that the tragic attack of an infuriated lion upon one of the party is included, but Sir Hubert felt that it was a definite feature of the adventure and should not be omitted.

The expedition and resultant records were intended by Sir Hubert solely as a contribution to science, without regard to the commercial aspect, but when the entertainment and educational features were brought to his attention, he finally consented to the public presentation of the picture, together with his verbal description of the experience.

The rest of the sound lecture purported to describe the various scenes depicted in the film "Ingagi" and was delivered, including the "Foreword", during the showing of the film upon the screen in the first person by a voice which was represented to be that of Sir Hubert Winstead, an eminent anthropologist, scientist and big game hunter. Excerpts from the sound lecture are as follows:

We wounded this big beast, and he ran for the clear with the natives in pursuit. * * * Our cameraman, Ed Joyce, was on the job, and exhibited more steel nerve with his camera than I did with my gun. * * * "Look out, Ed, he's coming!" Two females came charging out, and one caught Carrol unprepared. After our wounded had been cared for, we found we had bagged the largest lion ever taken in this region. Weighed 508 pounds and measured nine feet from the tip of his nose to the tip of his tail. * * *

Another grave robber, the armadillo, who feasts upon the dead. * * *

Meanwhile, Captain Swayne came across an animal of such queer character, that no one could give a name to it. It seemed like a cross between an armadillo and a tortoise; so Swayne called it a Tortadillo. So far as we have been able to learn, it is a species heretofore unknown to science.

We handled the creature with interest, until it snapped at one of our dogs—in about three minutes the canine was dead. After that, we gave the venomous devil a wide berth. * * *

In this village we heard two interesting pieces of information. One, that there was a tribe of pygmies near at hand. The other, regarding the gorillas—Ingagi, they called them.

We were soon to come upon our most amazing adventure.

All but 18 of our boys had now deserted.

Cutting our way through the dense underbrush, we were conscious of being watched by hundreds of invisible eyes. We caught a glimpse of the little fellows, wild as March hares.

One of the party tried to tempt them into the open, but they were as shy as a bevy of debutantes.

They were anxious for the beads. A tempting bait. We got a few camera shots of the little beggars, but never laid eyes upon them after that.

* * * * *

Through the trees * * * we caught sight of what seemed like human beings and gigantic apes. At last we had penetrated into the heart of the Ingagi country—where no white man had ever been before.

Everywhere there were strange sounds, mysterious rustlings of the underbrush; chattering that seemed both human and animal.

We were soon to be thrilled by what met our gaze—a company of women, unclothed, apparently living like animals, shy as reedbucks and fleet as antelopes.

* * * * *

In the background, you will see a giant Ingagi accompanying the women.

Dimly like figures from a nightmare, they stole through the forest while we watched, hardly daring to breathe.

* * * * *

One had a child hugged to her breast—a strange looking child, seemingly more ape than human.

We wanted this giant specimen—alive, if possible.

* * * * *

We followed him to his cave.

Into the dense underbrush we penetrated, expecting at any moment that the gorilla or some of its companions would pounce upon us.

At last, the animal vanished into the cleft of the mountain, and we proceeded to smoke him out.

Three great apes made for the brush.

* * * * *

Overcome by the fumes, the big Ingagi was easily netted, but holding him was another matter.

Maddened by our pursuit he charged us, upsetting the camera, almost destroying the amazing film record we had obtained. * * *

That night, we heard strange sounds, coming from the nearby village. Tom-toms and wierd chantings; great bonfires illuminating the scene.

* * * * *

To our amazement, he told us that this was the night the tribe sacrifices a woman to the Ingagi.

* * * * *

In the early morning, with our cameras, we prepared to obtain pictures of whatever might take place. * * *

And here is what we beheld.

We saw the woman seated on a log, apparently resigned to her fate. * * *

The brute pounced upon her—she screamed like one possessed.

* * * * *

The gorilla was dragging the woman through the thicket.

Twice Swayne attempted to shoot * * * and at last he fired.

While the gorilla is seldom the aggressor, he was now being robbed of his legitimate prey, and was prepared to fight to the last ditch.

Dropping the woman, he came on with roars that seemed to make the very earth tremble.

* * * * *

He weighed 602 pounds, stood six feet one and measured eight feet and four inches from the tip of the fingers of one hand to the tips of the other.

We will now show you the last strange vision we beheld, as we watched in the thicket where the fallen Ingagi lay. Out of the shadows there crept one of those queer half-human women, who gazed upon the dead monster—lifted its arms and let them fall again, seemingly unable to comprehend. Then, catching the click of the camera, she fled into the jungle.

PAR. 7. The said motion picture film "Ingagi" was made by respondents Nathaniel H. Spitzer, William Alexander, William Sydney Campbell, and Harold D. Smith, as described in paragraph 4 herein, and distributed in interstate commerce by respondent Congo Pictures, Ltd. Except for the scenes included in said film which were obtained from the film titled "Heart of Africa", and certain other authentic scenes of African exploration and travel obtained by the individual respondents from film libraries and other sources, the scenes in said film "Ingagi" purporting to be actual scenes taken in Africa on an exploration and big game hunting trip are in fact scenes taken in and about the city of Los Angeles, Calif., by said respondents, and added to said film to make it interesting and attractive to the public.

In offering the said motion picture film "Ingagi" for lease and distribution to be exhibited to the public in motion picture theaters throughout the United States, and in the advertising copy and other advertising literature prepared and supplied by respondents for the purpose of attracting the patronage of the general public, as well as in the sound lecture accompanying said film, said respondents claimed that all of said film "Ingagi" was an authentic picturization of an exploration and big game hunting trip in Africa, and that all of the scenes included in said film were pictures of happenings and events on said trip, and offered the said film as a true and authentic record of said trip without in any way advising the motion picture theater exhibitors and the public that many of the scenes included in said film were made in and about the city of Los Angeles, State of California, and that no such expedition into Africa was ever made.

PAR. 8. The statements and representations made by respondents in the pictures, newspaper reading matter, display advertising, and other advertising literature, and in the sound lecture accompanying the motion picture film "Ingagi", excerpts from which are set forth in paragraphs 5 and 6 hereinabove, and other statements and representations of similar import, are false, deceptive, and misleading, because the actual and true facts regarding certain scenes included in said film "Ingagi" are as follows:

The word "Ingagi" is represented as meaning "gorilla" in the African language. There is no such word in any written dictionary of any African language, and the word for "gorilla" as given in said dictionaries is entirely different from said word "Ingagi".

Sir Hubert Winstead, F.A.S., F.R.G.S., who is represented as leading the expedition on which said film was made, and Capt. Daniel Swayne, who is represented as being an American hunter and collector of museum specimens, who accompanied him, are fictitious

persons who do not exist in fact. No expedition headed by such persons on which pictures were made ever took place.

The lion shown in the film as attacking the camera man and being killed is a trained lion captive in Hollywood, which is often used in motion pictures.

Many of the jungle scenes are photographed in a zoo in Los Angeles, and California pepper trees are shown in certain scenes of the film, said trees not being found in Africa.

The armadillo shown in the picture is a native of South America and is never found in Africa; the orang-utans represented as gorillas are natives of Borneo and are never found in Africa. Certain other animals are represented as being native to Africa but are in fact never found there, but only in Asia.

The animal claimed to be "new to science", and called in the film "tortadillo", because of its resemblance to an armadillo and a tortoise, is a turtle with wings, scales and a long tail glued on to it.

The so-called "pygmies" claimed to be shown in their native environment are not pygmies at all, but are negro children from 5 to 10 years in age, living in Los Angeles, and procured by respondents for the picture.

The native woman represented as being a sacrifice by her tribe to the gorillas, is a negro woman living in Los Angeles, and who was procured by respondents for the making of the picture and is not a native African woman.

The people represented as "strange creatures apparently half-human and half-ape" are negroes living in Los Angeles and made up for the purpose of the picture.

The custom of a native tribe in sacrificing a woman each year to the gorillas, and the scenes depicting the carrying away of the woman by a gorilla, are all fictitious and faked scenes. They were taken in Hollywood, Calif., by the respondents and the negro woman and other persons in the scenes are not natives, but are actors or persons obtained for and acting the parts in said scenes. The gorilla in said scenes is a man dressed in a gorilla skin.

The representation that queer children were found "that seemed to be the offspring of some unholy alliance" is false because no such offspring in fact exist.

PAR. 9. On or about December 1, 1930, and January 1, 1931, respondents made various changes in the sound lecture incorporated in said film "Ingagi", in the advertising copy and other advertising literature used in connection with said film whereby respondents assert that objectionable scenes were eliminated and that the public was

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advised that the scenes showing the pygmies and the great apes were legends which were created and added to the film for their dramatic effect. Respondents further assert that the said film "Ingagi" with the modifications, additions, and alterations so made was passed by the censorship authorities of the State of New York on or about February 1, 1931, and that said modified film was licensed for exhibition by said censorship authorities. Respondents also state that the said film "Ingagi" is not now being exhibited in any motion-picture theater in the United States in either its original or revised form and has not been so exhibited for many months.

PAR. 10. Respondent's above described motion-picture film "Ingagi" has not purported to depict, and the reproduction of oral matter accompanying said picture has not purported to describe, fiction, but instead the supposed results of an expedition for travel, exploration and scientific investigation. Respondents have made representations of fact with respect to the personnel, character and results of said supposed scientific expedition. These representations are false and were made by respondents with the purpose and the effect of misleading prospective and actual attendants at public exhibitions of respondents' motion picture. The effect of said false, deceptive, and misleading representations in advertising and other publicity literature in connection with the leasing and distribution in interstate commerce of their said motion-picture film "Ingagi" was to induce exhibitors to lease and exhibit to the public said motion picture, to induce persons to attend exhibitions of the respondents' picture who would not otherwise have attended the same, and to mislead and deceive the public into paying money for admission to the various theaters in which said motion picture was being exhibited in the erroneous belief that said motion picture was a true and authentic pictorial record of an actual expedition in Africa, participated in by the several persons alleged by respondents to have made said expedition, and that the scenes set forth in said motion picture were pictures of actual animals and persons taken in Africa, when such was not the fact. The said false, deceptive, and misleading statements and representations so made by respondents have had the effect of diverting trade to respondents and their lessees from competing producers or lessors of motion pictures, and their lessees or exhibitors exhibiting their pictures. The circumstances under which respondents have discontinued the leasing of their said motion-picture film "Ingagi" does not afford sufficient assurance that respondents will not hereafter make false and misleading representations as to any motion-picture film or films, and the Commission deems it in the public interest to issue an order to cease and desist herein.

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Order

CONCLUSION

The acts and practices of respondents, under the conditions and circumstances set forth above, have the tendency to discredit and cause the public to lose confidence in travel and educational motion pictures, to the detriment and injury of competitors selling such motion pictures in interstate commerce by means of truthful representations.

The acts and practices of respondents, under the conditions and circumstances described in the foregoing findings, are to the prejudice of the public and respondents' competitors, and are unfair methods of competition in commerce, and constitute a violation 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".

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Commission upon the complaint of the Commission, the answer of the respondents, and stipulation as to the facts filed herein, and the Commission having made its findings as to the facts and its conclusion that 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",

It is now ordered, That the respondent, Congo Pictures, Ltd., its officers, agents, representatives, and employees, and respondents Nathaniel H. Spitzer, individually; William Alexander, individually; William Sydney Campbell, individually; and Harold D. Smith, individually, and each and all of said respondents, in connection with the leasing and distribution of the motion picture film "Ingagi" in commerce among the several States of the United States or in the District of Columbia, or in connection with the leasing and distribution in interstate commerce of any other film or films of a supposed scientific, educational, or travel character, or any film purporting to present facts as contrasted with fiction, cease and desist from representing in advertising, or in motion-picture films, or in any other manner, directly or indirectly:

(1) That a motion-picture film is a true and authentic pictorial record of an expedition in Africa, or any other country, unless all of the scenes incorporated in said film were actually made in Africa, or such other country.

(2) That all scenes incorporated in a motion-picture film of travel in Africa, or any other country, are pictures actually taken in Africa, or such other country, when such is not the fact.

(3) That a motion-picture film is a true and actual representation of habits and customs of races, tribes or communities of human beings, when in fact the pictures depicting such habits and customs are entirely fictional, were not taken in the country where such races, tribes or communities live, and no such habits and customs are practiced by such races, tribes or communities of human beings.

(4) That the scenes incorporated in a motion-picture film depict actual and true events and happenings, in foreign countries or among foreign peoples, when in fact such scenes are entirely fictional, and were not made in such foreign countries or among such foreign peoples.

(5) That a motion-picture film containing unusual and strange creatures, events and happenings is a true, actual and authentic representation of such creatures, events and happenings, when in fact some or all of such scenes are fictional.

(6) That a motion-picture film, or oral statements accompanying the presentation of such film, was made by certain named persons when no such persons in fact exist, or when said named persons did not do as represented.

(7) That pictures of gorillas are shown in a motion-picture film when no pictures of such animals are in fact incorporated in said film.

(8) That human beings dressed in animal skins are the actual animals they are made to portray and represent.

(9) That trained and tamed wild animals are wild animals, pictures of which were taken in their natural habitat and in a wild state.

(10) That a fictitious animal is an animal of a new species never before discovered, or that a fictitious animal is an actual animal newly discovered.

(11) That wild animals which are not native to, and do not have their habitat in, Africa were photographed in their natural state in Africa.

(12) That actors and other persons made-up to simulate natives of Africa, or any other country, are actual natives of Africa, or such other country, pictures of whom were taken in their native country.

(13) That a motion-picture film contains scenes showing pygmies and other natives of Africa, when in fact the alleged pygmies shown, and many of the other purported natives, are actors or other persons made-up to simulate such natives.

(14) That a motion-picture film purporting to be a true and authentic picture of travel in foreign countries is a true and actual pictorial record of travel in such foreign countries without advising the public that many of the scenes contained therein are entirely fictional, and were not taken in such foreign country.

It is further ordered, That respondents shall within 60 days from the date of the service upon them of the order herein, file with the Commission a report in writing setting forth in detail the manner and form in which this order has been complied with and conformed to.

IN THE MATTER OF
**THERONOID, INC., THERONOID CORPORATION, PHILIP
 ILLSLEY, J. ROY OWENS, AND J. N. WATSON**

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

Docket 1865. Complaint, Mar. 10, 1931¹—Decision, Apr. 8, 1933

Where two corporations, engaged or interested in the sale of (a) an electric device of asserted therapeutic value which (1) consisted of a coil of wire in a belt-like container; and was designed for (2) attachment to the ordinary house lighting current, and (3) use by the individual or patient through placing the same, but without conductive contact, over or around his person, for the therapeutic benefit assertedly resulting from the electromagnetic field created; together with (b) a test coil or closed circuit, and small electrical lamp, which under a principle long known, lights, when placed in close juxtaposition to the belt in operation; and three individuals interested through stock ownership, or otherwise in device in question; in promoting sale of said article or so-called "Theronoid", through broadcasting, pamphlets, and advertising.

Represented same as a beneficial therapeutic agent in the aid, relief, prevention or cure of some twenty-one diseases including arthritis, diabetes, heart trouble, indigestion, nervous disorders, neuritis, rheumatism and high-blood pressure, making such statements as "thousands of homes all over the U.S. have been made happier, thousands of people are today useful citizens in good health instead of wrecks of humanity because of electro-magnetism and Theronoid, * * * whether you are 7 or 77 * * * electro-magnetism will increase the flow of your life forces, speed up the process of oxidation and get rid of the poisons you have filled yourself with". "You men and women who live each hour in pain * * * and wish in your inmost hearts for eternal rest, accept my challenge that you can be released from your bonds and again find not only relief but also real normal health", "* * * is proving itself daily in thousands of cases throughout the United States to be of extreme benefit in conditions of chronic diseases * * *. Offers a way of using the natural force of electro-magnetism in the treatment of many diseases * * *. If you have been suffering for weeks, months, or possibly years, and have been unable to obtain relief, now is not the time to despair or give up hope; try again something that has helped others for exactly your same condition. You may have tried everything in a vain endeavor to secure your health, but until you try electro-magnetism you cannot know how really well you can be", and other statements of similar tenor;

Notwithstanding the fact that magnetic induction with actual tests of said product and other similar devices, together with the most elaborate tests of application of electro-magnetic fields to the animal body without conductivity, showed no effect produced, and the nature and effect of the physical forces brought into existence by attaching the device in question to the

¹ Amended.