

Syllabus

IN THE MATTER OF
SCREEN BROADCAST CORPORATION ET AL.COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 4736. Complaint, Mar. 19, 1942—Decision, June 25, 1943*

Where five corporations which (1) were engaged in the production and interstate sale, lease, rental, and distribution of commercial motion-picture films to or on the order of manufacturers and national advertisers of various products, and in the furnishing of display service to advertisers in motion-picture theaters through the use of such films, controlling more than 90 percent of the volume of business done in the motion picture screen advertising industry; (2) had under contract to display advertising films—under either national programs or cooperative programs, in latter of which cost is borne jointly by manufacturer and its local dealers—about 8,000 motion-picture theaters (of the approximately 18,000 in the United States) in small cities and towns; (3) were from time to time in free, active, and substantial competition with other film distributors and advertisers who produced their own films; and prior to the acts and practices below set forth, were in such competition with one another;

Acting in cooperation with one another or with and through corporate "General Screen Advertising" or "GSA" booking agency, controlled by one of their members, and its chairman, and also with and through their association, organized to adopt rules and regulations governing the handling of cooperative advertising films and programs, and its secretary—

- (a) Entered into understandings and agreements between and among themselves and with other film distributors as to screening rates and commissions and other terms and conditions in connection with the interstate sale, lease, rental, and distribution of films containing advertisements solicited from national advertisers; and pursuant to such understandings, etc., and in furtherance thereof (1) entered into individual contracts with moving-picture exhibitors for the exclusive privilege of exhibiting in their theaters commercial or advertising motion-picture films, usually for 5-year periods; (2) organized as their only channel for solicitation of national advertising contracts from manufacturers, aforesaid corporate "GSA," with the exception that two of their number also used as a booking agency for certain territory corporate "Screen Broadcast Corp." or "SBC," as below set forth; and (3) either directly or through their said booking agencies, fixed the display rates to be charged manufacturers, the rates, commissions, and other compensation to be allowed the agencies, and the terms and conditions under which national advertising films were to be shown in theaters; and

Where said "GSA" booking agency and said distributors—

- (b) Prepared, promulgated, executed, and carried out—except in the territory north of Virginia and east of Ohio, where aforesaid "SBC" had arrangements below described—uniform codistributor agreements whereunder (1) distributors were to furnish "GSA" a list of all theaters under contract, for classification by it according to size, circulation, desirability, and minimum rate

Syllabus

36 F. T. C.

per thousand weekly attendance; (2) without its specific authority, no distributor was to assign or make any listed theater available to any competitor for national motion-picture advertising, or list any theater contracts assigned to it by another; (3) no distributor was to accept or release any films other than cooperative film advertising for a national advertising account, unless booked and released through said "GSA"; (4) "GSA" was to have power arbitrarily to decide conflicts between distributors as to exhibitor contracts; (5) prescribed penalties were to be imposed for various violations of contract and rules governing the distribution of, and the fixed screening rates of compensation for, national film advertising; (6) distributors were to refer to "GSA" all prospects for such advertising; (7) "GSA" was to collect from national advertisers for all screen showings and remit to respective distributors a fixed percentage of the gross amounts collected; and (8) distributors were to observe certain "rate cards" issued by "GSA" for computing the screening rate for each theater on the basis of weekly attendance; and

Where aforesaid and certain other distributors—

- (c) Organized their aforesaid association and adopted and observed rules and regulations governing cooperative advertising transactions with manufacturers whereby (1) membership was limited to companies who were regularly engaged in furnishing film advertising display service for advertisers in theaters and had contracts therefor; (2) "standard advertising programs" consisted of those produced for manufacturers for their wholesale or retail outlets on either a sponsored or participating basis, and consisted of at least 13 films of specified length; (3) a standard rate book was printed by members after listing at semiannual meetings all theaters available for showing manufacturer-dealer programs, along with corresponding rates of compensation agreed to be observed in members' dealings with advertisers and theaters; (4) the "originator" or seller, of a standard program to a manufacturer, received a minimum commission of 10 percent on the gross volume of dealer contracts sold by the "participants," or association members who accepted the program and participated in the selling and servicing of it; (5) participants, upon acceptance of a program, leased or rented the necessary film prints from the originator at prices fixed by the association; and (6) participants made monthly reports to the originator showing the number of shipments they made on each originator's program; and

Where two of said distributors, said "SBC" booking agency, and its president—

- (d) Entered into understandings and agreements with respect to the sale of said advertising film to all national advertisers located in the northeastern United States; and

Where said "SBC" booking agency, pursuant thereto, and acting in concert with others above referred to—

- (e) Acted as exclusive national sales representative for said two distributors in the territory east of Ohio and north of Virginia, and part of Michigan, including Detroit, in which "SBC" had sole right to solicit and sell film advertising to all national advertisers whose home offices and advertising agencies were located therein, and in which said two distributors agreed not to accept any such advertising from any source other than "SBC"; and
- (f) Sold such advertising to such advertisers for screening in theaters controlled by said two distributors according to attendance figures or at rates of compensation listed with it by such distributors, but subject to the provision that if the distributors' attendance figures or listed rates with respect to

any theater were in excess of those published by aforesaid "GSA" booking agency, "SBC" was authorized to and did sell such advertising at "GSA's" figures;

With effect of unduly restraining and suppressing competition in the sale, leasing, rental, and distribution of commercial motion-picture films in commerce, and with capacity and tendency to create a monopoly therein:

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

Before *Mr. W. W. Sheppard*, trial examiner.

Mr. Everett F. Haycraft for the Commission.

Mr. Willard S. McKay, of New York City, for Screen Broadcast Corporation and Albert E. Fair.

Mr. David Strickler and *Mr. Thomas M. Burgess*, of Colorado Springs, Colo., for General Screen Advertising, Inc., J. D. Alexander, Association of Advertising Film Companies and Alexander Film Co.

Rosen, Kammer, Wolff & Farrar, of New Orleans, La., for C. J. Mabry and Motion Picture Advertising Service Co., Inc.

Morrison, Nugent, Berger, Byers & Johns, of Kansas City, Mo., for United Film Ad Service, Inc.

Oppenheimer, Hodgson, Brown, Donnelly & Baer, of St. Paul, Minn. for Ray-Bell Films, Inc.

Mr. John Francis Thice, of Independence, Mo., for A. V. Cauger Service, Inc.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that the respondents named and represented in the caption hereof, and more particularly described and referred to as respondents herein, have violated the provisions of section 5 of said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Screen Broadcast Corporation, hereinafter referred to as respondent SBC., is a corporation, organized under the laws of the State of New York with its office and principal place of business located at 30 Rockefeller Plaza, New York City.

Respondent, Albert E. Fair, owns the entire capital stock of respondent, SBC., and is named respondent herein, individually, and as president of said corporation.

Respondent, General Screen Advertising, Inc., hereinafter referred to as respondent, GSA., is a corporation, organized under the laws of the State of Delaware in December 1937, with its office and prin-

Complaint

36 F. T. C.

principal place of business located at 400 North Michigan Avenue, Chicago, Ill. Said respondent corporation succeeded to the business of a corporation of the same name organized as a nonprofit corporation under the laws of the State of Illinois in 1933 by respondent, Alexander Film Co., and respondent, Motion Picture Advertising Service Co., Inc.

Respondent, J. D. Alexander, president of respondent, Alexander Film Co., owns the majority of the capital stock of respondent, GSA., and is named respondent herein, individually, and as chairman of the board of directors of said respondent, GSA.

Respondent, Association of Advertising Film Companies, hereinafter referred to as respondent association, is a voluntary unincorporated association of advertising film companies, including the respondents, Motion Picture Advertising Service Co., Inc., United Film Ad Service, Inc., Ray-Bell Films, Inc., Alexander Film Co., and A. V. Cauger Service, Inc. Said association was organized in September 1938, to adopt rules and regulations governing the handling of cooperative advertising films and programs.

Respondent, C. J. Mabry, vice president and treasurer of respondent, Motion Picture Advertising Service Co., Inc., is named respondent herein, individually, and as secretary of respondent association.

Respondent, Motion Picture Advertising Service Co., Inc., hereinafter referred to as respondent, MPA, is a corporation organized under the laws of the State of Louisiana with its office and principal place of business located at 1032 Carondelet Street, New Orleans, La.

Respondent, United Film Ad Service, Inc., hereinafter referred to as respondent, United Film, is a corporation organized under the laws of the State of Missouri with its office and principal place of business located at 2449 Charlotte Street, Kansas City, Mo.

Respondent, Ray-Bell Films, Inc., hereinafter referred to as respondent, Ray-Bell, is a corporation organized under the laws of the State of Minnesota with its office and principal place of business located at 2269 Ford Parkway, St. Paul, Minn.

Respondent, Alexander Film Co., hereinafter referred to as respondent, Alexander, is a corporation organized under the laws of the State of Delaware with its office and principal place of business located in Colorado Springs, Colo.

Respondent, A. V. Cauger Service, Inc., hereinafter referred to as respondent, Cauger, is a corporation organized under the laws of the State of Missouri with its office and principal place of business located at 109-22 Winner Road, Independence, Mo.

PAR. 2. The said respondents, MPA, United Film, Ray-Bell, Alexander, and Cauger, hereinafter referred to collectively as respondent

distributors, are all engaged in the business of producing, selling, leasing, renting, and distributing commercial motion-picture films to or on the order of manufacturers and national advertisers of various products, and other distributors of motion-picture films, and the furnishing of display service to advertisers in motion-picture theaters through the use of such films. Said respondent distributors cause said films, when produced, sold, leased, or rented to be transported from their respective studios and places of business to motion-picture theaters located throughout the several States of the United States and in the District of Columbia, where said films are displayed on the moving-picture screens of said theaters for a specified length of time, usually 1 week, at the conclusion of which, said films are returned to respondent distributors for any necessary repairs thereto and then said films are again transported to and from other theaters in the same manner. There has been, and now is, a constant recurring course of interstate trade and commerce in said films throughout the several States of the United States and in the District of Columbia.

The business of distributing advertising films originated in showing screen advertising for local merchants in local theaters and this was, and still is, known as local advertising. In the beginning advertising films for display on local moving-picture screens were produced by the film distributor who serviced the theater and handled the entire transaction, paying or allowing the theater a certain amount for the use of the screen and retaining the balance of the amount of compensation received from the merchant. This form of local screen advertising is still carried on by all of the respondent distributors on an extensive scale, each distributor handling such advertising in its own way.

Approximately 12 years ago, manufacturers of nationally advertised products became interested in motion-picture screen advertising and through their advertising agencies put on advertising campaigns with various advertising film distributors who were supplying commercial motion-picture film to exhibitors. As a result there grew up in the screen-advertising industry the production and use of so-called national advertising films, consisting of short screen playlets produced in black and white, or color, and with sound, depicting the products of manufacturers, the cost of production and screening of which was entirely borne by the manufacturer; and so-called cooperative advertising films, which featured similar advertising instigated by the manufacturer, but the cost of which is borne jointly by the manufacturer and its local dealers. Where it is desired, a dealer signature trailer may be added to the film at the expense of the manufacturer or dealer, or both.

Complaint

36 F. T. C.

There are now in the United States approximately 16,000 motion-picture theaters in operation. Of this number, approximately 8,000 located in small cities and towns are recognized as good prospects for national and cooperative screen advertising and are under contract with respondent distributors to display films advertising products under either national advertising or cooperative programs.

PAR. 3. Said respondent distributors during the past 12 years have, from time to time, been in free, active, and substantial competition with other film distributors in the sale, rental, and distribution of commercial motion-picture films in commerce and also in competition with some advertisers who produce their own films and seek to have them displayed or shown on the screens of local theaters. Prior to the adoption of the practices hereinafter alleged, respondent distributors were in free, active, and substantial competition with each other, and but for the acts and practices hereinafter alleged, said respondent distributors and other distributors would now be in free, active, and substantial competition.

Said respondent distributors constitute a large and important part of the motion-picture screen advertising industry, controlling more than 90 percent in the aggregate of the volume of business done in said industry. Said respondent distributors, as allied and banded together in respondents, SBC., GSA., and Association, are enabled thereby to exercise more effectively the control and influence of trade and commerce in said industry.

PAR. 4. Respondent distributors acting in cooperation with each other and through and in cooperation with respondents, SBC., respondents, GSA., and respondent, Association, and individual respondents, Albert E. Fair, J. D. Alexander, and C. J. Mabry, during the period of time, to wit, since the year 1933, and particularly during and since the year 1937, have entered into understandings, agreements, combinations, and conspiracies between and among themselves and with other film distributors to hinder and suppress competition as to the screening rates and commissions and other charges in the interstate sale, lease, rental, and distribution of advertising films containing advertisements solicited from national advertisers; to restrain interstate trade in said advertising films, to hinder and suppress competition between and among producers and distributors of said advertising films, and to create a monopoly in the interstate sale, lease, rental, and distribution of said advertising films. Pursuant to said understandings, agreements, combinations, and conspiracies, and in furtherance thereof, said respondents have acted in concert and in cooperation with each other in doing and performing the following methods, acts, and practices:

(a) The respective respondent distributors entered into individual contracts with moving-picture exhibitors for the exclusive privilege of exhibiting commercial or advertising motion-picture films in the theater or theaters owned or controlled by the said exhibitors for a specified period of time, usually for 5 years.

(b) Respondent distributors organized or caused to be organized, respondent GSA, and respondent, SBC, as booking agencies to solicit national advertising contracts from manufacturers for and on behalf of respondent distributors.

(c) Respondent distributors, either directly or through respondents, GSA and SBC, determined and fixed the screening rates to be charged manufacturers, and the rates, commissions, and other amounts of compensation to be paid or allowed the booking agencies and exhibitors and the terms and conditions under which national advertising films are to be shown in various theaters of exhibitors with whom respondent distributors have contracts.

(d) Respondents, MPA and United Film, their officers and directors, entered into a distributors' agreement with respondent, SBC, and respondent, Fair and others, in October 1939, to remain in effect until the year 1945, containing, among others, provisions to the following effect: (1) That respondent, SBC, shall act as exclusive national sales representative for respondents, MPA and United Film, in the Northeastern territory, comprising roughly the territory east of the State of Ohio, north of the State of Virginia, and a part of the State of Michigan; (2) that in said territory respondent, SBC, and respondent, Fair, shall have the sole and exclusive right to solicit and sell national motion-picture film advertising to all national advertisers (those who carry advertisements in at least three magazines with circulation in three or more States) whose home offices and whose advertising agencies are located within said territory; and that each of the said distributors agree not to accept any national motion-picture film advertising from any source other than SBC in said territory; (3) that SBC will sell motion-picture film advertising to such national advertisers for screening in theaters controlled by the said distributors according to attendance figures or screening rates of compensation listed with said SBC by the respective distributors: *Provided, however,* That if any said distributor's attendance figures or listed rates with respect to any theater is in excess of that established by respondent, GSA in its published attendance listings or compensation ratings, the said SBC is authorized to sell national advertising for such theaters at the attendance figures and rates published by said respondent GSA.

Complaint

36 F. T. C.

(e) Respondent distributors and respondent, GSA, in 1940 prepared, promulgated, and executed uniform codistributor agreements between respondent, GSA, and respondent distributors containing provisions to the following effect: (1) That respondent distributors shall furnish respondent, GSA, a list of all theaters under contract which are to be classified by respondent, GSA, according to size, circulation, desirability, and minimum rate per thousand weekly attendance; (2) that without specific authority, from respondent, GSA, no distributor will make any theater so listed available to any competitor for national motion-picture advertising, nor list any theater contracts assigned to it by another; (3) that the distributors shall not accept or release any film, except cooperative film advertising for a national advertising account, unless such film is booked and released through respondent, GSA; (4) that respondent, GSA, shall have power to arbitrarily decide conflicts between distributors as to contracts with exhibitors; (5) a list of penalties were prescribed for various violations of the contract and rules governing distribution of, and the fixed screening rates of compensation for, national film advertising; (6) that respondent distributors shall refer to respondent GSA, all prospects for national advertising; (7) that respondent, GSA, shall collect from the national advertisers for all screen showings and remit to the respective distributors a fixed percentage of the gross amount collected; (8) that respondent distributors shall observe the rate card issued by respondent, GSA, for computing the screening rate for, or amount of compensation due, each theater based upon weekly attendance. Respondent distributors and respondent, GSA, carried out and put into effect all the above-described provisions of said codistributor agreements throughout the country except in the territory north of the State of Virginia and east of the State of Ohio, where respondent, SBC, had the arrangement described in subparagraph (d) preceding.

(f) Respondent distributors and other distributors organized the respondent association in 1938 and adopted the following rules and regulations governing cooperative advertising transactions with manufacturers, which have since been observed by said respondent distributors: (1) Membership in respondent association is limited to companies who are regularly engaged in furnishing film advertising display service for advertisers in theaters, and who have contracts for such service with theaters; (2) standard advertising programs of the association consist of programs produced for manufacturers for their wholesale or retail outlets on either a sponsored or participating basis and consist of at least 13 films of specified length. A sponsored film program is one where the manufacturer has paid for all negatives and film prints and assists the association in publicizing the

program to its dealers, but does not participate with the dealers in the cost of the showings. A participating or cooperative program is a sponsored program in which the manufacturer also participates with the local dealer in the cost of display service in theaters; (3) the association member who sells a standard association program to a manufacturer is known as the originator and the other members of the association who accept it and participate in the selling and servicing of the program are known as participators; (4) a standard rate book is printed by the association members after semiannual meetings during which all theaters available for showing manufacturer-dealer programs are listed with corresponding rates of compensation which the members agree to observe in their dealings with such theaters; (5) the originator receives a minimum commission of 10 percent on gross volume of dealer contracts sold by participators; (6) participators upon acceptance of a program from originator lease or rent the necessary supply of film prints from the originator at rates fixed by the association; (7) participators make monthly reports to the originator showing number of shipments made by participators on each originator's program.

PAR. 5. Each of the said respondents at the times herein mentioned acted in concert and in cooperation with one or more of the other respondents in doing and performing the methods, acts, and practices hereinabove alleged in furtherance of said understandings, agreements, combinations, and conspiracies.

PAR. 6. The capacity, tendency, and effect of the aforesaid understandings, agreements, combinations, and conspiracies, and the methods, acts, and practices engaged in and performed pursuant thereto and in furtherance thereof are, and have been (a) to unduly restrain, lessen, injure, and suppress competition in the interstate sale, lease, rental, and distribution of commercial motion-picture films; (b) to unduly hinder and prevent competing producers, sellers, and distributors of commercial motion-picture films from selling, leasing, renting, and distributing such film for shipment from the various States of the United States where said manufacturers, producers, sellers, and lessors are located to and into various other States where the exhibitors of said films are located; (c) to unduly impede, hinder, and prevent manufacturers of various commodities producing their own commercial motion-picture films from exhibiting said films on the screens of motion-picture theaters located throughout the several States and from transporting such film from the various States where said manufacturers are located to the prospective exhibitors thereof located in other States of the United States; (d) to tend to create in respondents a monopoly in the sale, leasing, rental, and distribution of com-

Findings

36 F. T. C.

mercial motion-picture films in interstate commerce; (e) to prejudice and injure the public and manufacturers, producers, sellers, lessors, and distributors of commercial motion-picture films and others who do not conform to the program of the respondents, or who do not desire, but are compelled, to conform to said program.

PAR. 7. The acts and practices of the respondents as herein alleged are all to the prejudice of competitors of respondent distributors and of the public; have a dangerous tendency to hinder and prevent, and have actually hindered and prevented, competition in the sale, leasing, rental, and distribution of commercial motion-picture films in commerce within the intent and meaning of the Federal Trade Commission Act; have unreasonably restrained such commerce in commercial motion-picture films and have a dangerous tendency to create in respondents a monopoly in the sale, leasing, rental, and distribution of said films, and constitute unfair methods of competition in commerce within the intent and meaning of section 5 of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on March 19, 1942, issued and subsequently served its complaint in this proceeding upon the respondents named in the caption hereof, charging them with the use of unfair methods of competition in commerce in violation of the provisions of that act. After the filing of respondents' answers to the complaint, testimony, and other evidence in support of the allegations of the complaint were introduced by the attorney for the Commission before a trial examiner of the Commission theretofore duly designated by it, and such testimony and other evidence were duly recorded and filed in the office of the Commission. Subsequently, a stipulation of facts was entered into by and between W. T. Kelley, chief counsel for the Commission, and the attorneys for all of the respondents, except Screen Broadcast Corporation and Albert E. Fair, which provided that, subject to the approval of the Commission, the statement of facts in such stipulation might be made a part of the record herein and might be taken as facts established in the proceeding, and that the Commission might proceed upon such statement of facts, together with any testimony taken in the proceeding, to make its report stating its findings as to the facts (including inferences which it might draw from the stipulated facts) and its conclusion based thereon and enter its order disposing of the proceeding as to such respondents without the filing of briefs or oral argument.

Thereafter, additional hearings were held before the trial examiner, at which additional testimony and other evidence were introduced with respect to respondents, Screen Broadcast Corporation and Albert E. Fair, and such testimony and other evidence were duly recorded and filed in the office of the Commission. Subsequently, the proceeding regularly came on for final hearing before the Commission on the complaint, the answers thereto, stipulation of facts (such stipulation having been accepted and approved by the Commission), testimony, and other evidence, report of the trial examiner upon the evidence and the exceptions filed by respondents, Screen Broadcast Corporation and Albert E. Fair, to such report, brief in support of the complaint and brief in opposition thereto filed on behalf of respondents, Screen Broadcast Corporation and Albert E. Fair, and oral argument by the attorney for the Commission and the attorney for respondents, Screen Broadcast Corporation and Albert E. Fair; and the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion based thereon.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Screen Broadcast Corporation, hereinafter referred to as respondent, SBC, is a corporation, organized under the laws of the State of New York, with its office and principal place of business located at 30 Rockefeller Plaza, New York, N. Y.

Respondent, Albert E. Fair, is the president of respondent, SBC. The entire capital stock of respondent, SBC is owned by respondent, Fair, and members of his family.

Respondent, General Screen Advertising, Inc., hereinafter referred to as respondent, GSA, is a corporation, organized for profit under the laws of the State of Delaware in December, 1937, with its office and principal place of business located at 400 North Michigan Avenue, Chicago, Ill. This respondent corporation succeeded to the business of a corporation of the same name organized as a nonprofit corporation under the laws of the State of Illinois in 1933 by respondents, Alexander Film Co. and Motion Picture Advertising Service Co., Inc. Respondent, Alexander Film Co., owns the majority of the capital stock of respondent, GSA.

Respondent, J. D. Alexander, is chairman of the board of directors of respondent, GSA.

Respondent, Association of Advertising Film Companies, hereinafter referred to as respondent Association, is a voluntary unincorporated association of advertising film companies, including the re-

spondents, Motion Picture Advertising Service Co., Inc., United Film Ad Service, Inc., Ray-Bell Films, Inc., Alexander Film Co., and A. V. Cauger Service, Inc. The association was organized in September 1938, to adopt rules and regulations governing the handling of co-operative advertising films and programs.

Respondent, C. J. Mabry, is vice president of respondent, Motion Picture Advertising Service Co., Inc. At the time of the issuance of the complaint herein he was Secretary of respondent association and treasurer of respondent, Motion Picture Advertising Service Co., Inc., but has since resigned from such positions.

Respondent, Motion Picture Advertising Service Co., Inc., hereinafter referred to as respondent, MPA, is a corporation organized under the laws of the State of Louisiana with its office and principal place of business located at 1032 Carondelet Street, New Orleans, La.

Respondent, United Film Ad Service, Inc., hereinafter referred to as respondent, United Film, is a corporation organized under the laws of the State of Missouri with its office and principal place of business located at 2449 Charlotte Street, Kansas City, Mo.

Respondent, Ray-Bell Films, Inc., hereinafter referred to as respondent, Ray-Bell, is a corporation organized under the laws of the State of Minnesota with its office and principal place of business located at 2269 Ford Parkway, St. Paul, Minn.

Respondent, Alexander Film Co., hereinafter referred to as respondent, Alexander Co., is a corporation organized under the laws of the State of Delaware with its office and principal place of business located in Colorado Springs, Colo.

Respondent, A. V. Cauger Service, Inc., hereinafter referred to as respondent, Cauger, is a corporation organized under the laws of the State of Missouri with its office and principal place of business located at 109-22 Winner Road, Independence, Mo.

PAR. 2. The respondents, MPA, United Film, Ray-Bell, Alexander Co., and Cauger, hereinafter referred to collectively as respondent distributors, are all engaged in the business of producing, selling, leasing, renting, and distributing commercial motion-picture films to or on the order of manufacturers and national advertisers of various products and other distributors of motion-picture films, and the furnishing of display service to advertisers in motion-picture theaters through the use of such films. The respondent distributors cause their films, when produced, sold, leased, or rented, to be transported from their respective studios and places of business to motion-picture theaters located throughout the several States of the United States and in the District of Columbia, where such films are displayed on the moving-picture screens of such theaters for a specified length of time,

usually 1 week, at the conclusion of which the films are returned to respondent distributors for any necessary repairs thereto and the films are then again transported to and from other theaters in the same manner. There has been and now is a constant course of trade and commerce by respondent distributors in such films among and between the several States of the United States and in the District of Columbia.

PAR. 3. The business of distributing advertising films originated in showing screen advertising for local merchants in local theaters, and this was and still is known as local advertising. In the beginning, advertising films for display on local moving-picture screens were produced by the film distributor, who serviced the theater and handled the entire transaction, paying or allowing the theater a certain amount for the use of the screen and retaining the balance of the amount of compensation received from the merchant. This form of local screen advertising is still carried on by all of the respondent distributors on an extensive scale, each distributor handling such advertising in its own way:

Approximately 12 years ago, manufacturers of nationally advertised products became interested in motion picture screen advertising, and through their advertising agencies put on advertising campaigns with various advertising film distributors who were supplying commercial motion-picture film to exhibitors. As a result, there has grown up in the screen advertising industry the production and use of so-called national advertising films (consisting of short screen playlets produced in black and white or color and with sound) depicting the products of manufacturers, the cost of production and screening of which is entirely borne by the manufacturer. There has also grown up in the industry the use of so-called cooperative advertising films, which feature similar advertising initiated by the manufacturer but the cost of which is borne jointly by the manufacturer and its local dealers. Where it is desired, a dealer signature trailer may be added to the film at the expense of the manufacturer or dealer, or both.

There are now in the United States approximately 16,000 motion picture theaters in operation. Of this number, approximately 8,000 located in small cities and towns are recognized as good prospects for national and cooperative screen advertising and are under contract with respondent distributors to display films advertising products under either national advertising or cooperative programs.

PAR. 4. The respondent distributors, during the past 13 years, have from time to time been in free, active, and substantial competition with other film distributors in the sale, rental, and distribution of

commercial motion-picture films in interstate commerce, and also in competition with some advertisers who produce their own films and seek to have them displayed or shown on the screens of local theaters. Prior to the adoption of the practices hereinafter described, respondent distributors were in free, active, and substantial competition with one another, and but for such acts and practices the respondent distributors and other distributors would now be in free, active, and substantial competition.

The respondent distributors constitute the major part of the motion-picture screen advertising industry, controlling in the aggregate more than 90 percent of the volume of business done in the industry.

PAR. 5. The respondent distributors, acting in cooperation with one another and through and in cooperation with respondent, GSA, respondent association, and respondents, J. D. Alexander and C. J. Mabry, have at various times since the year 1933, and particularly during and since the year 1937, entered into understandings, agreements, combinations, and conspiracies between and among themselves and with other film distributors as to screening rates and commissions and other terms and conditions in connection with the interstate sale, lease, rental, and distribution of advertising films containing advertisements solicited from national advertisers. Pursuant to such understandings, agreements, combinations, and conspiracies, and in furtherance thereof, these respondents have acted in concert and in cooperation with one another in doing and carrying out the following acts and practices:

(a) The respective respondent distributors entered into individual contracts with moving-picture exhibitors for the exclusive privilege of exhibiting commercial or advertising motion-picture films in the theater or theaters owned or controlled by such exhibitors for a specified period of time, usually for 5 years.

(b) Respondent distributors organized or caused to be organized respondent, GSA, as their only booking agency and only channel for solicitation of national advertising contracts from manufacturers, except that respondents, MPA and United Film, have also used respondent, SBC, as a booking agency, as set forth in paragraph 6.

(c) Respondent distributors, either directly or through their booking agency or agencies, determined and fixed the display rates to be charged manufacturers and the rates, commissions, and other amounts of compensation to be paid or allowed the booking agency or agencies, and the terms and conditions under which national advertising films are to be shown in various theaters of exhibitors with whom respondent distributors have contracts.

(d) In 1940, respondent distributors and respondent, GSA, prepared, promulgated, and executed uniform codistributor agreements

between respondent, GSA, and respondent distributors containing provisions to the following effect:

1. That respondent distributors shall furnish respondent, GSA, a list of all theaters under contract and which are to be classified by respondent, GSA, according to size, circulation, desirability, and minimum rate per thousand weekly attendance.

2. That without specific authority from respondent, GSA, no distributor will assign or make any theater so listed available to any competitor for national motion-picture advertising, nor list any theater contracts assigned to it by another.

3. That the distributors shall not accept or release any film except cooperative film advertising for a national advertising account, unless such film is booked and released through respondent, GSA.

4. That respondent, GSA, shall have power arbitrarily to decide conflicts between distributors as to contracts with exhibitors.

5. That certain prescribed penalties be imposed for various violations of the contract and rules governing the distribution of and the fixed screening rates of compensation for national film advertising.

6. That respondent distributors shall refer to respondent GSA all prospects for national advertising.

7. That respondent, GSA, shall collect from the national advertisers for all screen showings and remit to the respective distributors a fixed percentage of the gross amount collected.

8. That respondent distributors shall observe certain "rate cards" issued by respondent, GSA, for computing the screening rate for each theater based upon weekly attendance.

Respondent distributors and respondent, GSA, put into effect and carried out these provisions of such codistributor agreements throughout the United States except the territory north of the State of Virginia and east of the State of Ohio, where respondent, SBC, had the arrangement described in paragraph 6.

(e) In 1938, respondent distributors and certain other distributors organized the respondent association and adopted the following rules and regulations governing cooperative advertising transactions with manufacturers, which have since been observed by the respondent distributors:

1. Membership in respondent association is limited to companies who are regularly engaged in furnishing film advertising display service for advertisers in theaters, and who have contracts for such service with theaters.

2. Standard advertising programs of the association consist of programs produced for manufacturers for their wholesale or retail outlets on either a sponsored or participating basis, and consist of at least

13 films of specified length. A sponsored film program is one where the manufacturer has paid for all negatives and film prints, and assists the association in publicizing the program to its dealers but does not participate with the dealers in the cost of the showings. A participating or cooperative program is a sponsored program in which the manufacturer also participates with the local dealer in the cost of display service in theaters.

3. The association member who sells a standard association program to a manufacturer is known as the "originator," and the other members of the association who accept the program and participate in the selling and servicing of it are known as "participators."

4. A standard rate book is printed by the association members after semiannual meetings during which all theaters available for showing manufacturer-dealer programs are listed, with corresponding rates of compensation which the members agree to observe in their dealings with advertisers and theaters.

5. The originator receives a minimum commission of 10 percent on the gross volume of dealer contracts sold by participators.

6. Participators, upon acceptance of a program from an originator, lease or rent the necessary supply of film prints from the originator at rates fixed by the association.

7. Participators make monthly reports to the originators showing the number of shipments made by participators on each originator's program.

PAR. 6. In October 1939, respondents, MPA, United Film, SBC, and Albert E. Fair, entered into certain understandings, agreements, combinations, and conspiracies with respect to the sale of motion picture film advertising to all national advertisers whose home offices and advertising agencies are located within a designated portion of the United States, such understandings, agreements, combinations, and conspiracies being evidenced by a written contract whose terms provide that it shall remain in effect until July 1, 1945. Pursuant to such understandings, agreements, combinations, and conspiracies, these respondents, acting in concert and in cooperation with one another, have carried out and put into operation and effect the following acts and practices:

(a) Respondent, SBC, acts as exclusive national sales representative for respondents, MPA and United Film, in the northeastern part of the United States, comprising roughly the territory east of the State of Ohio, north of the State of Virginia, and a part of the State of Michigan, including the city of Detroit.

(b) In such territory, respondent, SBC, has the sole and exclusive right to solicit and sell national motion picture film advertising to

957

Order

all national advertisers whose home offices and whose advertising agencies are located within such territory; and respondents, MPA and United Film, have agreed not to accept any national motion picture film advertising from any source other than respondent, SBC, in that territory.

(c) Respondent, SBC, sells motion picture film advertising to such national advertisers for screening in theaters controlled by these distributors according to attendance figures or at rates of compensation listed with respondent, SBC, by the respective distributors. If, however, the distributor's attendance figures or listed rates with respect to any theater are in excess of those established by respondent GSA, in its published attendance listings or compensation ratings, respondent, SBC, is authorized to sell and does sell national advertising for such theaters at the rates or attendance figures published by respondent, GSA.

PAR. 7. Each of the respondents has acted in concert and in cooperation with one or more of the other respondents in doing and carrying out the acts and practices herein described in furtherance of the aforesaid understandings, agreements, combinations, and conspiracies.

PAR. 8. The understandings, agreements, combinations, and conspiracies entered into by respondents as set forth above, and the acts and practices engaged in and carried out by respondents pursuant thereto and in furtherance thereof as herein described, have had and now have the capacity, tendency, and effect unduly to restrain, hinder, lessen, and suppress competition in the sale, leasing, rental, and distribution of commercial motion-picture films in commerce, as "commerce" is defined in the Federal Trade Commission Act, and the capacity and tendency to create in respondents a monopoly in the sale, leasing, rental, and distribution of such films in such commerce.

CONCLUSION

The acts and practices of the respondents as herein found are all to the prejudice of the competitors of respondent distributors and of the public, and constitute unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission; the answers of respondents; a stipulation of facts entered into by and between W. T. Kelley, chief counsel for the Commission, and the attorneys for all of the respondents, except Screen Broadcast Corporation and Albert E. Fair,

which provided among other things that the Commission might proceed upon the statement of facts in such stipulation, together with any testimony taken in the proceeding, to make its report stating its findings as to the facts (including inferences which it might draw from the stipulated facts) and its conclusion based thereon and enter its order disposing of the proceeding as to such respondents without the filing of briefs or oral argument; testimony and other evidence taken before a trial examiner of the Commission theretofore duly designated by it; report of the trial examiner upon the evidence and the exceptions to such report filed by respondents, Screen Broadcast Corporation and Albert E. Fair; brief in support of the complaint and brief in opposition thereto filed on behalf of respondents, Screen Broadcast Corporation and Albert E. Fair; and oral argument by the attorney for the Commission and the attorney for respondents, Screen Broadcast Corporation and Albert E. Fair; and the Commission having made its findings as to the facts and its conclusion that the respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That respondent, Association of Advertising Film Companies, an unincorporated trade association, and its officers; respondent C. J. Mabry, individually, and as secretary of said association; respondent distributors, Motion Picture Advertising Service Co., Inc., United Film Ad Service, Inc., Ray-Bell Films, Inc., Alexander Film Co., and A. V. Cauger Service, Inc., corporations, and their respective officers; and said respondents' agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, leasing, renting, and distribution of commercial motion-picture films in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from entering into, continuing, cooperating in, or carrying out any planned common course of action, agreement, understanding, combination, or conspiracy between or among any two or more of said respondents, or between any one or more of said respondents and others not parties hereto, to do or perform any of the following acts or things:

1. Fixing or maintaining screening or display rates to be charged national advertisers, or rates, commissions, or other amounts of compensation to be paid or allowed booking agencies.

2. Entering into contracts with motion-picture exhibitors for the exclusive privilege of exhibiting national advertising by means of commercial motion-picture films in theaters owned, controlled, or operated by such exhibitors.

3. Entering into, continuing, or carrying out any agreement with respondent, Screen Broadcast Corporation, or respondent, General Screen Advertising, Inc., or any other booking or central agency, whereby:

(a) Respondent distributors agree not to accept national motion-picture-film advertising from any source other than respondent, Screen Broadcast Corporation, or respondent, General Screen Advertising, Inc., or other booking or central agency, in any designated territory; or

(b) Respondent, Screen Broadcast Corporation, or respondent, General Screen Advertising, Inc., or any other booking or central agency, agrees to sell motion-picture film advertising to national advertisers for screening in theaters under contract with respondent distributors according to screening or display rates cooperatively fixed and listed with respondent, Screen Broadcast Corporation, or respondent, General Screen Advertising, Inc., or other booking or central agency, by the respective respondent distributors.

4. Furnishing to respondent, Screen Broadcast Corporation, or respondent, General Screen Advertising, Inc., or any other booking or central agency, a list of theaters under contract with respondent distributors for classification by respondent, Screen Broadcast Corporation, or respondent, General Screen Advertising, Inc., or other booking or central agency, according to size, circulation, distribution, or weekly attendance, for the purpose or with the effect of determining display rates or charges to advertisers.

5. Declining to accept or release any film for a national advertising account unless such film is booked and released through respondent, Screen Broadcast Corporation, or respondent, General Screen Advertising, Inc., or some other designated booking or central agency.

6. Observing any rate card or similar device issued by respondent, General Screen Advertising, Inc., or any other booking or central agency, for computing the screening or display rate or the amount of compensation due each distributor or theater.

7. Adopting, promulgating, or putting into effect standard rates of compensation for use in dealing with national advertisers in connection with cooperative advertising programs.

8. Adopting or observing in dealings with advertisers or theaters, rate books, or similar devices issued by respondent association or any other association, or by any booking or central agency.

It is further ordered, That respondent, Screen Broadcast Corporation, a corporation, and its officers; respondent, Albert E. Fair, individually, and as president of said corporation; respondent, General Screen Advertising, Inc., a corporation, and its officers; respondent, J. D. Alexander, individually, and as chairman of the board of direc-

Order

36 F. T. C.

tors of General Screen Advertising, Inc.; respondent distributors, Motion Picture Advertising Service Co., Inc., United Film Ad Service, Inc., Ray-Bell Films, Inc., Alexander Film Co., and A. V. Cauger Service, Inc., corporations, and their respective officers; and said respondents' agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, leasing, renting, and distribution of commercial motion-picture films in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from entering into, continuing, cooperating in, or carrying out any planned common course of action, agreement, understanding, combination, or conspiracy between or among any two or more of said respondents, or between any one or more of said respondents and others not parties hereto, to do or perform any of the following acts or things:

Entering into, continuing, or carrying out any agreement whereby:

(a) Respondent distributors or any of them agree not to accept any national motion-picture film advertising from any source other than respondent, General Screen Advertising, Inc., or respondent, Screen Broadcast Corporation, or any individual or booking agency, in any designated territory; or

(b) Respondents, General Screen Advertising, Inc., Screen Broadcast Corporation, Albert E. Fair and J. D. Alexander, or any of them, agree to sell motion-picture film advertising for national advertisers for screening in theaters under contract with respondent distributors according to screening or display charges or rates of compensation cooperatively fixed or determined by respondent distributors or any two or more of them.

It is further ordered, That all of the respondents shall, within 60 days after service upon them of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which they have complied with this order.

Syllabus

IN THE MATTER OF

VICTOR KLEIN, TRADING AS UNITED ART STUDIOS; AND
BENJAMIN KADET AND ADA KADET, TRADING AS
KADET ART & FRAME COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 4924. Complaint, Mar. 4, 1943—Decision, June 25, 1943*

A painting is an original representation of a design, image, or object on a surface by means of paints, water color or oil, without the intervention of any mechanical means, such as a camera; a water color being a painting with pigments for which water, and not oil, is used as a solvent, while an oil painting is done by hand with brushes in plastic oil colors on canvas or similar fabric, without the aid of photography.

Where one V. K., an individual engaged in the competitive interstate sale and distribution of tinted or colored enlargements of photographs and snapshots, and frames therefor, through house-to-house salesmen whom he equipped with attractive samples of colored enlargements represented by them to prospects as having been done by "United Art Studios," trade name employed by said V. K.—

- (a) Represented and referred to said samples and enlargements in such house-to-house canvassing as "paintings," "oil paintings," "hand painted," and "oil paintings on canvas," and in order or contract form furnished to his said salesmen and displaying trade name "United Art Studio," set forth that such "certificate" entitled "the holder to ONE Octagon Portrait Painting * * * Convexed—at cost of production, \$2.95, unframed for the purpose of advertising the moderne portraiture and extending our business"; and, after advising customer that "the cost of production must be completely furnished" when proof was shown him at his residence, stated that "we only ask that you appreciate this beautiful painting and be kind enough to display it and recommend it at its value and not the amount you expended for it";
- (b) Represented to prospective customers that such was a "special introductory offer" made only to a "selected few" or "limited number" in a given locality, and a "special advertising offer" to introduce his products in that community;
- (c) Represented that said "paintings on canvas" were of the value of \$30.00 but would be made for only \$2.95, which represented merely the cost of production, no charge being made for the "artist's" time; that said "United Art Studio" was a company of high standing and exceptional financial rating which conducted a large art school, and had to provide work for its art pupils; that its profit was realized from the tuition paid by said art students, and that accordingly it would sell said beautiful paintings for only \$2.95;
- (d) Failed to call attention of customer in first contact to the peculiar convex form, shape, and size of the finished picture, or to mention the fact that, by reason thereof, a frame could not be secured readily, if at all, except from said individual at his prices; and, through the second agent or "field artist" who appeared with the uncolored rough proof of the enlarged photograph and collected the amount charged therefor, sought to sell a frame which cost him from \$1.00 to \$4.00, for amounts ranging as high as \$15.00, setting forth, in the event of the customer's objection or refusal, that the picture would be of no value if not framed, and that unless frame was bought, the picture ordered