

TRIAD COMMUNICATIONS, INC.  
d/b/a WHEELS & KEELS

IN THE DISTRICT COURT

VS.

117TH JUDICIAL DISTRICT  
*Robert Bladman, J.*

CALLER-TIMES PUBLISHING  
COMPANY, INC.

NUECES COUNTY, TEXAS

CHARGE OF THE COURT

*July out 12<sup>35</sup>  
22 July gets Exts.  
VERDICT 345*

MEMBERS OF THE JURY:

*2/19/88*

This case is submitted to you on questions about the facts, which you must decide from the evidence you have heard in this trial. You are the sole judges of the credibility of the witnesses and the weight to be given to their testimony, but in matters of law, you must be governed by the instructions in this charge. In discharging your responsibility on this jury, you will observe all the instructions which have previously been given you. I shall now give you additional instructions which you should carefully and strictly follow during your deliberations.

1. Do not let bias, prejudice or sympathy play any part in your deliberations.

2. In arriving at your answers, consider only the evidence introduced here under oath and such exhibits, if any, as have been introduced for your consideration under the rulings of the Court, that is, what you have seen and heard in this courtroom, together with the law as given you by the Court. In your deliberations, you will not consider or discuss anything that is not represented by the evidence in this case.

3. Since every answer that is required by the charge is important, no juror should state or consider that any required answer is not important.

4. You must not decide who you think should win and then try to answer the questions accordingly. Simply answer the questions and do not discuss or concern yourselves with the effect of your answers.

5. You will not decide an issue by lot or drawing straws, or by any other method of chance. Do not return a quotient verdict. A quotient verdict means that the jurors agree to abide by the result to be reached by adding together each juror's figures and dividing by the number of jurors to get an average. Do not do any trading on your answers; that is, one juror should not agree to answer a certain question one way if others will agree to answer another question another way.

6. You may render your verdict upon the vote of ten or more members of the jury. The same ten or more of you must agree upon all of the answers made and to the entire verdict. You will not, therefore, enter into an agreement to be bound by a majority or any other vote of less than ten jurors. If the verdict and all of the answers therein are reached by unanimous agreement, the Foreman shall sign the verdict for the entire jury. If any juror disagrees as to any answer made by the verdict, those jurors who agree to all findings shall each sign the verdict.

These instructions are given you because your conduct is subject to review the same as that of the witnesses, parties, attorneys and the Judge. If it should be found that you have disregarded any of these instructions, it will be jury misconduct and it may require another trial by another jury; then all of our time will have been wasted.

The Foreman or any other who observes a violation of the Court's instructions shall immediately warn the one who is violation the same and caution the juror not to do so again.

products have similar prices; whether changes in the price of one product are followed by changes in the price of the other product; whether the products are sold to similar customers; and whether they are distributed and sold by the same kinds of distributors or dealers.

The other aspect of relevant market to be considered is the geographic area within which the products compete. This area of effective competition need not be of any particular size. For example, it can be as large as the United States or as small as a single community.

Plaintiff contends that the relevant geographic market in this case is the greater Corpus Christi metropolitan area. The defendant contends the relevant geographic market in this case is the area in which the Corpus Christi Caller-Times is circulated.

The relevant geographic market is the area in which defendant faces competition from suppliers of competing products that are in the relevant product market, and to which a buyer can practicably turn for supplies.

#### M O N O P O L Y   P O W E R

Monopoly power is the power to dominate or control a market. This means the power to control prices or to exclude competition in the relevant market.

## R E L E V A N T   M A R K E T

If monopoly power exists, it must be found to exist within an economically meaningful market, or what is called a relevant market.

There are two aspects you must consider in defining a relevant market. The first is the relevant product market; the second is the relevant geographic market.

The basic idea of a relevant product market is that the products within it are reasonable substitutes from a buyer's point of view; that is, the products compete with each other. This does not mean that products must be identical to be in the same relevant product market. It means that, as a matter of practical fact and the actual behavior of buyers, the products are reasonable substitutes for the buyer's needs. In this case, plaintiff claims the relevant product market is the printed classified advertising market. Defendant claims the relevant product market is the market consisting of all media available for advertising.

There are a number of factors you may consider in determining whether products are reasonable substitutes for each other. The basic test is whether changes in the price of one product cause a considerable number of customers to switch from one product to another. If so, the products are in the same market. You may also consider how people in the industry and the public at large view the products; whether the products have the same or similar characteristics or uses; whether the

1.

All questions must be answered based on proof by a preponderance of the evidence. "PREPONDERANCE OF THE EVIDENCE" means the greater weight and degree of credible testimony or evidence introduced before you and admitted in evidence in this case.

II.

"PROXIMATE CAUSE" means that cause which, in a natural and continues sequence, produces an event, and without which cause such event would not have occurred; and in order to be a proximate cause, the act or omission complained of must be such that a person using ordinary care would have foreseen that the event, or some similar event, might reasonably result therefrom. There may be more than one proximate cause of an event.

III.

A fact may be established by direct evidence or be circumstantial evidence or both. A fact is established by direct evidence when proved by documentary evidence or by witnesses who saw the act done or heard the words spoken. A fact is established by circumstantial evidence when it may be fairly and reasonably inferred from other facts proved.

The power to control prices is the power of a company to establish appreciably higher prices for its good than those charged by competitors for equivalent goods without a substantial loss of business to competitors. Thus, if a company that has raised prices eventually has to lower its prices to the level of prices charged by its competitors, it may not have monopoly power in the sense of power to control prices.

The power to exclude competition means the power of a company to dominate a market by eliminating existing competition from that market or by preventing new competition from entering that market.

Mere possession of monopoly power, if lawfully acquired, does not violate the antitrust laws. But it is unlawful to use monopoly power, however lawfully acquired, to foreclose competition, to gain a competitive advantage, or to destroy a competitor. Therefore, a company that has lawfully acquired monopoly power may not use that power to maintain or tighten its hold on the market. Such use may be shown by conduct that depends for its success on the company's monopoly power, as distinguished from conduct that could be successfully employed by firms without monopoly power in the relevant market.

In determining whether there has been an unlawful exercise of monopoly power, you must bear in mind that a company has not acted unlawfully simply because it has engaged in ordinary competitive behavior that would have been an effective means of competition if it were engaged in by a firm without monopoly power, or simply because it is large and efficient.



QUESTION NO. 3

Did the defendant willfully or flagrantly acquire or maintain this monopoly power by any of the following means?

Answer, "yes" or "no" as to each.

Yes a) Targeting plaintiff's customers or potential customers for special deals.

No b) Impeding plaintiff's distribution.

If you have answered "yes" with respect to either subsection of question no. 3, then answer the respective subsection(s) in questions no. 4; otherwise, do not answer question no. 4. 1 2/85

QUESTION NO. 4

Did such conduct cause injury to plaintiff's business or property?

Answer, "yes" or "no".

Yes a) Targeting plaintiff's customers or potential customers for special deals.

No b) Impeding plaintiff's distribution.

QUESTION NO. 5

Did defendant willfully or flagrantly attempt to monopolize the relevant market by any of the following means? /

You are instructed that "attempt to monopolize" means that the defendant had specific intent to achieve monopoly power in the relevant market and that there was a dangerous probability that sooner or later it would achieve this goal.

Answer "yes" or "no" to each.

Yes a) Targeting plaintiff's customers or potential customers for special deals. /

No b) Impeding plaintiff's distribution. /

If you have answered "yes" with respect to either subsection of question no. 5, then answer the respective subsection(s) in question no. 6; otherwise, do not answer question no. 6.

QUESTION NO. 6

Did such conduct cause injury to plaintiff's business or property?

Answer "yes" or "no".

Yes a) Targeting plaintiff's customers or potential customers for special deals.

No b) Impeding plaintiff's distribution.

QUESTION NO. 7

Did defendant maliciously interfere with plaintiff's contractual or business relationships?

~~Answer "yes" or "no"~~

~~Answer \_\_\_\_\_~~

You are instructed that malice for purpose of this question means without excuse or just cause. You are further instructed that excuse or just cause may be present if a party seeks to fairly compete in the market place.

Answer "yes" or "no".

Answer yes

If you have answered question no. 7 "yes", then answer question no. 8; otherwise, do not answer question no. 8.

QUESTION NO. 8

Was such conduct a proximate cause of injury to plaintiff's business or property?

Answer "yes" or "no".

Answer yes

If you have answered "yes" to any part of questions no. 4, 6, or 8, then answer question no. 9; otherwise, do not answer question no. 9.

QUESTION NO. 9

What sum of money, if paid now in cash, would fairly and reasonably compensate the plaintiff for its damages, if any, caused by defendant's conduct?

Consider the elements of damage listed below and none other. Consider each element separately. Do not include damages for one element in any other element.

Answer in dollars and cents, if any, with respect to each element.

a) Past lost net profits:

Answer  
\$ 305,416

b) Reduction in the goodwill value of the business:

\$ 0

If you have answered question no. 8 "yes" and only in that event, answer question no. 10; otherwise, do not answer question no. 10.

QUESTION NO. 10

What sum of money, if any, should be assessed against the defendant as exemplary damages?

Definition: "Exemplary damages" means an amount that you may in your discretion award as an example to others and as a penalty or by way of punishment, in addition to any amount you may have found as actual damages.

Answer in dollars and cents, if any.

Answer: \$ 0

