

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA

Plaintiff,

v.

LUCASFILM LTD.

Defendant.

Case: 1:10-cv-02220

Assigned To: Walton, Reggie B.

Assign. Date: 12/21/2010

Description: Antitrust

**UNITED STATES' MOTION AND SUPPORTING MEMORANDUM TO ENTER FINAL
JUDGMENT**

Pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(b)-(h) (“APPA” or “Tunney Act”), the United States moves for entry of the proposed Final Judgment filed in this civil antitrust case. The proposed Final Judgment (attached as Exhibit A) may be entered at this time without further hearing if the Court determines that entry is in the public interest.¹ The Defendant has stipulated to entry of the proposed Final Judgment without further notice to any party or other proceedings. No party or member of the public has requested a hearing. The Competitive Impact Statement (“CIS”), filed by the United States on December 21, 2010, explains why entry of the proposed Final Judgment is in the public interest. The United States is filing simultaneously with this motion a Certificate of Compliance (attached as

¹ The proposed Final Judgment attached to this Motion is the same as the one originally filed on December 21, 2010.

Exhibit B) setting forth the steps taken by the parties to comply with all applicable provisions of the APPA and certifying that the statutory waiting periods have expired.

I. BACKGROUND

On December 21, 2010, the United States filed the Complaint in this matter, alleging that the Defendant entered into an agreement with Pixar, pursuant to which each agreed to restrict certain employee recruiting practices. This agreement was per se unlawful under Section 1 of the Sherman Act, 15 U.S.C. § 1.

At the same time the Complaint was filed, the United States also filed a proposed Final Judgment, which is designed to eliminate the anticompetitive effects of the agreement, and a CIS. The proposed Final Judgment is designed to preserve competition in the market for digital animators and other employees by mandating certain conduct remedies. First, the proposed Final Judgment prevents the Defendant from entering into similar agreements in the future. Second, the proposed Final Judgment supplements this restraint on the Defendant with obligations to educate executives about the proposed Final Judgment, as well as annually report the company's compliance with the proposed Final Judgment to the United States.

Entry of the proposed Final Judgment would terminate this action, except that the Court would retain jurisdiction to construe, modify, or enforce the provisions of the proposed Final Judgment and to punish violations thereof.

II. COMPLIANCE WITH THE APPA

The APPA requires a sixty-day period for the submission of public comments on a proposed Final Judgment. *See* 15 U.S.C. § 16(b). In compliance with the APPA, the United States filed a CIS in this Court on December 21, 2010; published the proposed Final Judgment and CIS in the *Federal Register* on December 28, 2010, *see* 75 Fed. Reg. 81,651 (2010); and

caused to be published in *The Washington Post* a summary of the terms of the proposed Final Judgment for seven days from December 25, 2010 through December 31, 2010. The 60-day period for public comments ended on March 1, 2011, and three comments were received. The United States filed its Response to Public Comments and the comments themselves with this Court on April 15, 2011, and published the Response and the public comments in the Federal Register on April 28, 2011. See 76 Fed. Reg. 23,839 (2011). The Certificate of Compliance filed with this Motion as Exhibit B recites that all the requirements of the APPA have now been satisfied. It is therefore appropriate for the Court to make the public interest determination required by 15 U.S.C. § 16(e) and to enter the Final Judgment.

III. STANDARD OF JUDICIAL REVIEW

Before entering the proposed Final Judgment, the Court is to determine whether the Judgment “is in the public interest.” See 15 U.S.C. § 16(e). In making that determination, the Court shall consider:

- A) the competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration of relief sought, anticipated effects of alternative remedies actually considered, whether its terms are ambiguous, and any other competitive considerations bearing upon the adequacy of such judgment that the court deems necessary to a determination of whether the consent judgment is in the public interest; and
- B) the impact of entry of such judgment upon competition in the relevant market or markets, upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. § 16(e).

In its CIS filed on December 21, 2010, the United States set forth the public interest standard under the APPA and now incorporates those statements herein by reference. The public, including affected competitors and customers, have had the opportunity to comment on the proposed Final Judgment as required by law. As explained in the CIS, the proposed Final Judgment is within the range of settlements consistent with the public interest and the United States therefore requests that this Court enter the proposed Final Judgment.

IV. CONCLUSION

For the reasons set forth in this Motion and the CIS, the Court should find that the proposed Final Judgment is in the public interest and should enter the proposed Final Judgment without further hearings. The United States respectfully requests that the proposed Final Judgment attached hereto be entered as soon as possible.

Dated: May 9, 2011

Respectfully submitted,

/s/

Adam T. Severt
Ryan S. Struve (D.C. Bar #495406)
Jessica N. Butler-Arkow (D.C. Bar #430022)
H. Joseph Pinto III
Anthony D. Scicchitano
Trial Attorneys

U.S. Department of Justice
Antitrust Division
Networks and Technology Section
450 Fifth Street, NW
Suite 7100
Washington, DC 20530
Telephone: (202) 307-6200
Facsimile: (202) 616-8544
Email: adam.severt@usdoj.gov

CERTIFICATE OF SERVICE

I, Adam Severt, hereby certify that on May 9, 2011, I caused a copy of the United States' Motion and Supporting Memorandum to Enter the Final Judgment to be served on Defendant Lucasfilm by mailing the document via email to the duly authorized legal representatives of the defendant, as follows:

FOR DEFENDANT LUCASFILM, LTD.
Claudia R. Higgins, Esq.
Kaye Scholer LLP
901 Fifteenth Street, NW
Washington, D.C. 20005

_____/s/
Adam T. Severt
Trial Attorney
Networks & Technology Section
U.S. Department of Justice
Antitrust Division
450 Fifth Street, NW
Suite 7100
Washington, DC 20530
Telephone: (202) 307-6200
Fax: (202) 616-8544
Email: adam.severt@usdoj.gov