

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

VALASSIS COMMUNICATIONS, INC.,

Plaintiff,

v.

Case No. 07-706645-CZ

Hon. Michael F. Sapala

NEWS AMERICA INCORPORATED, a/k/a
NEWS AMERICA MARKETING GROUP,
NEWS AMERICA MARKETING FSI, INC. a/k/a
NEWS AMERICA MARKETING IN-STORE
SERVICES, INC. a/k/a NEWS AMERICA
MARKETING IN-STORE SERVICES, LLC,

Defendants.

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FIRST AMENDED COMPLAINT

There is a related civil action between these parties which arises in part out of the same transactions or occurrences. However, the federal district court dismissed, without prejudice, these state claims at the request of defendants.

NOW COMES Plaintiff, VALASSIS COMMUNICATIONS, INC. ("VALASSIS"), by and through its attorneys, and files this Amended Complaint for damages and injunctive relief against NEWS AMERICA INCORPORATED a/k/a NEWS AMERICA MARKETING GROUP, NEWS AMERICA MARKETING FSI, INC. a/k/a NEWS AMERICA MARKETING FSI, LLC and NEWS AMERICA MARKETING IN-STORE SERVICES, INC. a/k/a NEWS AMERICA MARKETING IN-STORE SERVICES, LLC, (collectively referred to as "NEWS" or "NEWS Defendants," unless the context indicates otherwise) for tortious interference with business relationship or expectancy, and unfair competition, stating as follows:

1. VALASSIS is a Delaware corporation, with its headquarters and principal place of business in the City of Livonia, County of Wayne, State of Michigan. VALASSIS is a marketing services company, providing a wide range of strategic marketing solutions for manufacturers, retailers and internet/e-commerce companies. VALASSIS's products and services include newspaper-delivered free standing inserts ("FSIs") or coupons. VALASSIS has been a publicly traded company on the New York Stock Exchange since 1992, having been originally founded in 1970.

2. Defendant, News America Incorporated a/k/a News America Marketing Group, is the marketing arm of News Corporation. It is a Delaware corporation, with its principal place of business in New York, New York, which does business throughout the United States, including within the State of Michigan and Wayne County, Michigan.

3. Defendant, News America Marketing FSI, Inc. a/k/a News America Marketing FSI, LLC, is a Delaware corporation or limited liability company, with its principal place of business in New York, New York, which does business throughout the United States, including within the State of Michigan and Wayne County, Michigan. Defendant, News America

Marketing In-Store, Inc. a/k/a News America Marketing In-Store, LLC, is a Delaware corporation or limited liability company, with its principal place of business in New York, New York, which does business throughout the United States, including within the State of Michigan and Wayne County, Michigan.

4. Jurisdiction is proper under chapter 7 of chapter 600 of the Michigan Compiled Laws including MCL §§ 600.711, 600.715, 600.721 and 600.725. Venue is proper in this district under MCL 600.1629 and 600.1627.

5. This amended complaint is made to narrow and clarify the claims to be tried in this court. In particular, it is the purpose and effect of this amended complaint to separate and disengage the federal antitrust claims pending in the United State District Court for the Eastern District of Michigan in Case No. 2:06-CV-10240 from the claims pending in this court so that the claims are independent and not overlapping in legal theory or in the elements of the claims or defenses. VALASSIS intends to litigate its claims for tying, predatory pricing, unlawful bundled pricing, and exclusive dealing as violations of the federal antitrust laws in federal court and its tort claims, as alleged herein and as will be determined during discovery and proven at trial, in this Court.

INTRODUCTION

6. Paul Carlucci, Chief Operating Officer of Defendant, NEWS AMERICA MARKETING, stands before his assembled sales force and shows them a vignette from a motion picture. It is a scene from THE UNTOUCHABLES, depicting mobster Al Capone beating one of his enemies to death with a baseball bat.¹ The message is obvious and irrefutable: the NEWS employees will operate in the business world with unbridled aggression. The selected scene is a perfect metaphor for the wrongful business practices both expected by senior management,

¹ Forbes Magazine, 10/31/05, pg. 66, Vol. 176, No. 9.

including Rupert Murdoch, the Chairman of News Corporation, which owns News America, and, in fact, being employed by the NEWS Defendants to wrongfully divert business from VALASSIS in the FSI coupon business.

7. Carlucci reflects the mindset of his boss, Rupert Murdoch, whom NEWS executives have publicly described as the “capo di tutti capo”– the big boss that “has to have it all.” Carlucci himself has vowed to “destroy”² competitors who have the temerity to lawfully compete against the NEWS Defendants.

8. Following the example of Capone in Carlucci’s chosen scene, the NEWS Defendants have created and implemented schemes to exploit superior power in in-store advertising and promotions with the goal of utilizing or leveraging that power to divert business from VALASSIS in the FSI business and otherwise, as more fully detailed herein, to intentionally interfere with VALASSIS’s expectations and contracts. NEWS and VALASSIS are the two principal providers of FSIs in the United States.

9. NEWS’s schemes, in part, are based on the fact that many important customers purchase in-store promotions from NEWS, which allows NEWS to leverage its position in in-store sales to induce such customers to buy all or a substantial part of their FSI requirements from NEWS. NEWS does this either by offering in-store and FSI jointly or, if it provides a separate price at all, NEWS imposes a severe economic penalty on the price of its in-store promotions, so that NEWS’s customers, in some instances, have no economically viable alternative but to purchase both FSIs and in-store promotions from NEWS. NEWS also employs many other wrongful, illegal, and unethical acts and tactics to interfere with VALASSIS’s legitimate business expectations and to divert business from VALASSIS as detailed herein. These wrongful acts include: lying to customers and potential customers in the process of

² Inc.Com Magazine, January 2004, pg. 88.

fraudulently and falsely inducing them to award their FSI and other business to NEWS; threatening legal action to destroy potential competition; coercing, oppressing, and exploiting customers to preclude them from doing business with VALASSIS; engaging in repeated illegal acts of unfair competition; using leverage in businesses where it does not have competition from VALASSIS to coerce or mislead customers into not doing business with VALASSIS in areas of business where it does have competition from VALASSIS; deviating from its own established and admitted business standards to divert business from VALASSIS; using multi-year, staggered, exclusive, Sole Source, Single Source, tie-in, packaging, bundling, and dominant share agreements singly and in combination and over extended time periods to foreclose customers from doing business with VALASSIS; and engaging in other business practices which are not justified by cost savings, efficiencies, or any sufficient economies with the purpose and effect of diverting business from VALASSIS.

10. The effect of NEWS's unethical, illegal, and improper schemes is tantamount to theft. NEWS's conduct skews the competitive playing field between VALASSIS and NEWS in the FSI business, thereby coercing and inducing customers to purchase NEWS's FSIs instead of VALASSIS's through wrongful, illegal and unethical conduct, rather than through competition on the merits of the FSI market. These unequal positions have caused and will continue to cause damage to VALASSIS, to Michigan consumers, to customers of VALASSIS and NEWS, and to consumers throughout the United States. NEWS's wrongful behavior has damaged VALASSIS and its shareholders in the millions of dollars.

THE BUSINESS OF NEWS AND VALASSIS

11. The FSI coupon business consists of coupon booklets that are inserted into newspapers throughout the United States at various intervals throughout the year. Plaintiff

VALASSIS and Defendant NEWS are the two principal providers of FSIs in the United States. Consumer packaged goods manufacturers (“CPGs”) purchase FSIs for placement throughout the United States and associated regional markets. FSIs are placed within Wayne County, Michigan

12. FSIs are separate and distinct from in-store advertising and promotions in a number of ways. The unique characteristics of FSIs include, but are not limited to:

- a. the ability to reach nearly 70 million households weekly, or targeted subsets of this group, with a 90% recognition by paper recipients, reflecting an unmatched level of interest and penetration;
- b. an efficient distribution system via newspaper delivery, which provides an extremely cost-effective way to reach a large population;
- c. a low cost structure per coupon redeemed;
- d. the provision of a tangible form of special product-specific offer which is collected and stays with the coupon-clipper until the time of purchase;
- e. the ability to target a particular type of buyer who prepares in advance of shopping for those items which he or she intends to buy, and is thereby induced to seek out a particular item based on the FSI;
- f. the ability to provide a sufficiently diversified collection of CPG offerings which are available at a single local retail outlet for the coupon-clipper;
- g. no single marketing alternative accomplishes more marketing objectives, which include but are not limited to:
 - i. increased retail merchant sell-in;
 - ii. an increase in retail merchant support;
 - iii. the ability to drive traffic to retailers;

- iv. the ability to drive incremental volume to retailers and manufacturers;
- v. the ability to build brand awareness;
- vi. the ability to build brand image;
- vii. the ability to attract new customers to brand; and
- viii. the ability to provide customer rewards for loyalty.

13. The NEWS Defendants themselves consider the FSI coupon business to be unique, separate and distinct from the in-store advertising and promotions, as reflected by the fact that the NEWS Defendants have established separate corporations, one to operate its FSI couponing business (News America Marketing FSI, Inc.) and another to operate the in-store advertising and promotions business (News America Marketing In-Store Services, Inc.). These entities work together, with the direction of News America Marketing Group, to accomplish the improper, illegal and unethical schemes described herein.

14. NEWS and VALASSIS are the only competitors in the FSI market, capturing virtually 100% of the market. NEWS's improper, illegal and unethical conduct, described herein, has resulted in a loss of business to VALASSIS and a significant gain in business for NEWS. NEWS has achieved this result not through competition on the merits in this market, but through the improper means described herein including unfairly and unethically leveraging its superior power in the unrelated in-store advertising and promotions business to divert business in the FSI business away from VALASSIS.

15. NEWS's improper, illegal and unethical conduct has resulted in an increase in its market share in the FSI business. NEWS now maintains a majority position in the FSI market.

As of last year, NEWS controlled 65% of the FSI market, which reflects a gain of at least 15% since it first implemented the schemes and conduct described herein.

16. As VALASSIS's customers have been, and are continuing to be, coerced by NEWS into taking NEWS's FSIs and not dealing with VALASSIS, VALASSIS's ability to create an FSI with a sufficient diversity and quantity of offerings is severely diminished. An FSI that lacks a sufficient number and variety of offerings of desirable coupons for packaged goods that shoppers intend to shop for during their regular grocery trip is unable to compete in the FSI market. Thus, the "tipping" effect of NEWS's conduct and inflated power in the FSI market will be to prevent VALASSIS's FSI from effectively competing in the market at all, long before NEWS reaches 90% or 100% market share.

IN-STORE ADVERTISING AND PROMOTIONS BUSINESS

17. In-store advertising and promotions (hereinafter "in-store promotions") consist of several products placed within major grocery stores and drug store chains to promote consumer commodities sold by CPGs during shopping or at the "moment of decision." The in-store promotions are accomplished through the sale of one or more products by third-parties to CPGs. The third-parties then arrange for placement in major grocery stores and drug store chains through contractual arrangements with the entities controlling these stores. Stores which do not allow in-store promotional products to be placed in their store are not part of the available in-store market. These in-store promotions include an "at-the-shelf coupon dispenser," shelf advertising, floor advertising and shopping cart advertisements, specifically designed to persuade shoppers at the moment of decision. The CPGs, which are the principal purchasers of FSIs, also are the main purchasers of in-store advertising and promotion products.

18. According to reported statistics, 60 to 70% of purchasing decisions at grocery stores or drug stores for consumer packaged goods are made while the shopper is shopping at the store. These spontaneous purchasing decisions can be directly affected only by reaching the customer at the shelf and during shopping. Therefore, in-store promotions can impact a substantial amount of sales by affecting shopper decisions where other methods cannot.

19. Advertising and promotional products within the store are separate and distinct from FSIs. They are differentiated from various outside the store or post-purchase promotions because, among other things, they:

- a. attract shopper attention at the moment of purchase decision;
- b. offer intrusive, more visible advertising in a clutter free environment that the shopper must view;
- c. differentiate the brand at the shelf;
- d. help the shopper when the shopper is comparison shopping;
- e. do not require customer action until time of product selection;
- f. attract a different type of shopper who is not responsive to other advertising methods; and
- g. offer instant gratification to the shopper via immediate price savings.

20. In particular, FSIs are especially distinct from in-store advertising and promotions. FSIs target shoppers before they enter the store; the decision to clip the coupon for use in shopping is made prior to the shopping trip; and a relationship with the retailer is not required to distribute the coupons to the shopper. Moreover, the cost, reach and effectiveness of the FSIs and in-store programs differ.

21. In the late 1990's, NEWS began its meteoric rise to dominance of the in-store promotions business. In furtherance of that objective, NEWS acquired ActMedia in 1997 – a competitor in in-store promotions. With that acquisition, NEWS achieved a substantial share of the in-store business. It grew and entrenched that power by entering into highly restrictive exclusive long-term contracts with retailers to market its in-store promotions. Through these and other efforts, NEWS solidified its power, and now controls roughly 85% of the available in-store market, foreclosing meaningful in-store competition.

22. The in-store advertising and promotion business in the United States is currently dominated by NEWS, which has a share of approximately 85% of the in-store promotions business. Sales of in-store promotions in 2004 were approximately \$450 million. Of all in-store promotions sales in 2004, NEWS accounted for at least \$390 million. In 2005, these numbers grew, but were substantially similar, and NEWS maintained its 85% market share and continues to do so. NEWS's power is further enhanced by several factors, including that NEWS is the only provider of a multi-faceted in-store promotion package, while its competitors can only provide a limited promotion. This includes the ability to offer each of the following as part of an in-store promotion: SmartSource Carts, which use shopping cart advertising to reach shoppers from the moment they enter the store until the time they check out; SmartSource Coupon Machine, which delivers immediate incentives to category shoppers at the point of decision and encourages impulse purchases; SmartSource Shelftake One, which presents shoppers with promotion offers and product information right at the shelf; SmartSource Shelftalk, which comprises at-shelf advertising that reinforces brand messages as consumers make their final purchase decisions; SmartSource Floortalk, which consists of neon, glitter, chrome or hologram custom floor advertising to draw consumers to a CPG brand in the aisle where the product is stocked;

SmartSource Price Pop Guaranteed, which delivers SKU-specific pricing with large color signage in the aisle, installed and maintained weekly by NEWS employees; Freezer Shelftalk, which provides large and colorful signage on the freezer door; and others. The few other providers of in-store promotions cannot offer such a diverse array or such complete coverage in the store. Therefore, for those CPGs that desire a full-line of promotions or substantial coverage in-store, NEWS is the sole provider.

23. NEWS's exclusive contracts provide that the chain of stores will not permit installation of in-store advertising and promotion products by any party other than NEWS. The contracts also prevent competitors from placing in-store promotions in stores covered by these contracts. Consequently, a CPG that seeks nationwide or broad regional coverage for an in-store promotion campaign has no alternative but to acquire its in-store advertising and promotion products from NEWS. CPGs have found that such broad coverage is necessary to the success of the in-store promotion.

24. NEWS's long-term staggered, exclusive contracts enhance its power and are a substantial barrier to entry, enabling it to prevent competition and new entrants from competing. An example of the exclusive arrangements with retailers is NEWS's exclusive contract with Safeway, Inc., which NEWS announced on August 26, 2004. The agreement has a ten-year term that assures that NEWS is the exclusive third-party provider of in-store advertising and promotions at all Safeway stores throughout the United States. Based upon information and belief, NEWS has similar exclusive arrangements with a majority of the other national grocery chains including, but not limited to, Safeway, Kroger, Albertsons, Ahold and Winn Dixie. Kroger, Albertsons and Safeway are by far the three largest grocery chains in the United States.

25. NEWS's exclusive contracts with major national and regional supermarket chains, including those identified above, restrict competition in over 16,200 chain and high-volume supermarket stores. These contracts represent NEWS's stranglehold over 82% of the supermarket segment of the relevant market. NEWS also has exclusive contracts with major national and regional drug stores. Its exclusive contracts restrict competition and give it power over 17,100 national and regional drug stores, representing over 90% of the drug store segment.

COUNT I – Tortious Interference with Business Relationship or Expectancy

26. Plaintiff realleges each of the foregoing paragraphs as if fully set forth herein.

27. VALASSIS, as described above, has a business relationship with hundreds of CPGs to which VALASSIS sells FSIs for use within the State of Michigan and elsewhere.

28. VALASSIS has a reasonable business expectancy to continue business with those CPGs referenced above and with those other CPGs to which VALASSIS proposes to sell FSIs for use within the State of Michigan and elsewhere.

29. NEWS is, and at all pertinent times was, aware of the relationship and/or expectancy between VALASSIS and these CPGs.

30. NEWS acted unethically by intentionally wrongfully interfering with the relationship between VALASSIS and the CPGs by the acts described above.

31. The actions of the NEWS Defendants caused the independent companies to terminate or alter their business relationship or expected relationship with VALASSIS.

32. Clients and prospective clients of VALASSIS who have used and would otherwise continue to use VALASSIS as their FSI provider within the State of Michigan and elsewhere have been unlawfully coerced by NEWS to place their FSIs with NEWS.

33. The termination of these business relationships and expectancies caused significant financial harm to VALASSIS.

COUNT II - Unfair Competition

34. Plaintiff realleges each of the foregoing paragraphs as if fully set forth herein.

35. VALASSIS and the NEWS Defendants each are engaged in commerce in and affecting the State of Michigan and the entire United States, through their sales and distribution of advertisements in the FSI market.

36. The NEWS Defendants, through the actions described above, have engaged in an unfair and deceptive trade practice within the State of Michigan and elsewhere. Specifically, the NEWS Defendants' actions are unethical and oppressive.

37. The NEWS Defendants' actions, described above, have caused significant damage to VALASSIS in the form of lost sales and profits within the State of Michigan and elsewhere.

38. The NEWS Defendants' actions, if unabated by this Court, pose the dangerous risk of continued harm to the Michigan market and, ultimately, to Michigan shoppers.

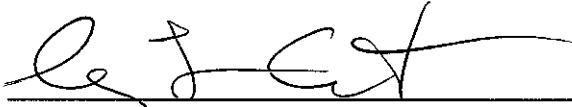
WHEREFORE, VALASSIS respectfully requests that this Honorable Court (1) enter judgment in favor of Plaintiff against Defendants; (2) enjoin Defendants from further pursuing acts and agreements in restraint of trade; (3) award Plaintiff its actual damages suffered as a result of Defendants' wrongful acts and agreements; (4) award Plaintiff its costs, including attorney fees; and (5) grant any other relief that this Court deems appropriate, just and equitable.

JURY DEMAND

Plaintiff hereby demands a trial by jury on all causes of action.

Respectfully submitted,

MILLER, CANFIELD, PADDOCK & STONE, PLC

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Dated: July 7, 2008

Attorneys for Plaintiff Valassis Communications,
Inc.

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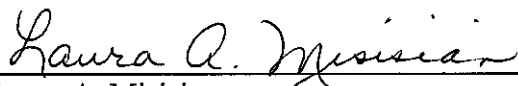
Defendants.

PROOF OF SERVICE

Laura A. Misisian, being duly sworn states that she is a secretary at the law firm of Miller, Canfield, Paddock and Stone, P.L.C., and that on July 7, 2008 she served a copy of the First Amended Complaint with Proof of Service upon:

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Washington DC 20006

via Federal Express.



Laura A. Misisian