

748 F.2d 602, \*, 1984 U.S. App. LEXIS 15990, \*\*;  
1984-2 Trade Cas. (CCH) P66,311; 40 Fed. R. Serv. 2d (Callaghan) 954

On November 22, 1977, Warner Brothers mailed out bid solicitations for "Superman," one of the most commercially important movies of the year. The bid solicitation stated that theatres exhibiting screen ads would not be considered eligible for licensing **[\*\*9]** the new film. The clear intent was to discourage screen advertising programs.

As a result of the major distributors' coercive activities, numerous theatre exhibitors withdrew from the NITE program; they could not afford to lose their principal sources of supply. At the same time, Cinemavision tried to separate itself from SAFFCO and NITE in order to save its business. These efforts came too late, and in 1978 Cinemavision went out of business.

NITE, Patterson, and SAFFCO, invoking section 4 of the Clayton Act, 15 U.S.C. § 15 (1982), brought this private anti-trust action against the eight defendant film distributors we have referred to *supra*, alleging that they had conspired to destroy SAFFCO, in violation of sections 1 and 2 of the Sherman Act, 15 U.S.C. §§ 1 and 2 (1982), because SAFFCO threatened to compete vigorously in their oligopolistic market. The plaintiffs alleged that the statements by the defendants' executives concerning the NITE Film Fund and the subsequent meeting of the MPAA Advertising-Publicity Committee evidenced this conspiracy and that Warner Brothers' and Twentieth Century Fox's threatened boycott of any exhibitor **[\*\*10]** who participated in the on-screen advertising program was in pursuance thereof. The conspirators knew, plaintiffs alleged, that the exhibitors would respond to such threats by refraining from on-screen advertising.

After answering plaintiffs' complaint, the defendants moved for summary judgment on the ground that plaintiffs lacked standing to prosecute their antitrust claims. Following a period of discovery limited to the standing issue, the court granted the defendants' motions as to Patterson and NITE because they were not within the target area of the alleged antitrust violations.

The parties subsequently engaged in extended discovery on the merits of SAFFCO's claims, and the defendants again moved for summary judgment. Before the court could hear argument on their motions, though, SAFFCO's attorneys withdrew from the case. SAFFCO obtained new counsel, but Patterson soon became dissatisfied with his performance and sought to represent SAFFCO himself. The court refused to permit him to do so, however. Patterson then tried another approach; he dissolved SAFFCO and moved the court to substitute him for the company as party plaintiff. The court denied his motion and proceeded **[\*\*11]** to consider the defendants' motions for summary judgment. It concluded that the defendants' actions were not responsible for SAFFCO's alleged injury and consequently granted summary judgment for the defendants.

SAFFCO and Patterson appeal. SAFFCO contends that the court erred in granting the distributors summary judgment because material facts remained unresolved. **[\*607]** Patterson contends that the court erred in concluding that he lacked standing to sue under the antitrust laws. Both appellants challenge the trial court's denial of Patterson's motion for substitution as party plaintiff and its disposition of several procedural and discovery matters. We discuss these points in order.

## II.

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