

IN THE MATTER OF

C. R. ANTHONY COMPANY, BURRELL-BERGER, INC., MISS
PLAZA, INC., SAMUEL R. PARNES, INC., AND GORGEOUS
FROCKS, INC.

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF PAR. (C) OF SEC. 2 OF AN ACT OF CONGRESS APPROVED OCT. 15, 1914, AS
AMENDED BY THE ROBINSON-PATMAN ACT, APPROVED JUNE 19, 1936

Docket 3834. Complaint, June 27, 1939—Decision, Sept. 12, 1939.

Where (a) four corporations which (1) were engaged in sale of merchandise to corporate operator of 57 retail department stores in Oklahoma, Kansas, Texas, and New Mexico, in active competition with other manufacturers and sellers of similar merchandise engaged in selling and distributing their said products to said operator and its competitors, and which (2) were fairly representative of large group of sellers likewise engaged, as aforesaid indicated, in manufacture and sale of women's apparel, allied and other merchandise, in interstate commerce to said operator and other purchasers; and (b) other sellers—

Transmitted, paid, and delivered to said operator, under separate name employed by it in thus purchasing from its New York office for its stores aforesaid, so-called brokerage fees and commissions, consisting of various percentages on quoted sales prices, as agreed upon between each of said sellers and said corporate operator, and in connection with which no services whatsoever were rendered to, for, or in behalf of, aforesaid four, or any other, sellers by said corporate operator, under either its own name or name employed by it in thus purchasing, as above set forth; and

Where said corporate operator engaged as aforesaid, under separate name employed by it in purchasing from its New York office and through its own employees for its aforesaid stores—

Received and accepted, and was enabled to receive and accept, through instrumentality of said separate name thus made use of by it, so-called brokerage fees or commissions upon merchandise purchased by it from said various sellers aforesaid, and in or as result of transactions in which it was sole party in interest and actual purchaser, and in connection with which, as above set forth, it rendered in neither capacity any services whatsoever to such sellers:

- Held*, (1) That such payments by sellers aforesaid of fees and commissions to said corporate operator under name employed by it as above set forth, and upon its said purchases, constituted violation of subsection (c) of section 2 of Clayton Act, as amended, and
- (2) That such receipt and acceptance of fees and commissions paid as brokerage by and from aforesaid and other sellers, by said corporate operator under name employed by it as aforesaid and in connection with merchandise purchased by it, and through and by means of instrumentality of separate name employed as aforesaid, constituted violation of subsection (c) of section 2 of statute in question.

Complaint

Mr. F. Hier for the Commission.

Cantrell, Savage & McCloud, of Oklahoma City, Okla., for C. R. Anthony Co.

Mr. Meyer Halpern, of New York City, for Burrell-Berger, Inc.

Mr. Samuel M. Reiss, of New York City, for Miss Plaza, Inc.

Mr. Maxwell Parnes, of New York City, for Samuel R. Parnes, Inc.

Goldberg & Hatterer, of New York City, for Gorgeous Frocks, Inc.

COMPLAINT

The Federal Trade Commission, having reason to believe that the parties respondent named in the caption hereof and hereinafter more particularly designated and described, since June 19, 1936, have violated and are now violating the provisions of subsection C, section 2 of the Clayton Act, as amended by the Robinson-Patman Act, approved June 19, 1936 (U. S. C. title 15, sec. 13) hereby issues its complaint stating its charges with respect thereto as follows:

PARAGRAPH 1. Respondent C. R. Anthony Co., is a corporation organized and existing under and by virtue of the laws of the State of Oklahoma with its principal office and place of business at 540 First National Bank Building, Oklahoma City, Okla. Said C. R. Anthony Co. owns and operates 57 retail department stores located in the States of Oklahoma, Kansas, Texas, and New Mexico.

PAR. 2. Respondent C. R. Anthony Co. also maintains an office in Room 1409 at 1450 Broadway, New York City, N. Y., under the name of The Anco Co. All maintenance expenses of said office, including salaries, are paid by the respondent C. R. Anthony Co. and the functions of the said New York City office are wholly performed by employees of said respondent C. R. Anthony Co. on a flat salary basis paid solely by said respondent, which employees act for and in behalf of, and are subject to and under the direct and exclusive control of said respondent C. R. Anthony Co.

Said employees purchase for and in the name of respondent C. R. Anthony Co., the requirements of its retail department stores consisting of women's apparel, allied, and other merchandise from various sellers and manufacturers located in New York City, among whom are the seller respondents hereinafter named. The merchandise so purchased is then shipped by said sellers from New York City into and through the various States of the United States to the various retail department stores of the respondent, C. A. Anthony Co., invoices therefor being sent to and paid by said respondent C. R. Anthony Co.

PAR. 3. Respondent Burrell-Berger, Inc., is a corporation organized and existing under the laws of the State of New York with its principal office and place of business at 1375 Broadway, New York City, N. Y.

Respondent Miss Plaza, Inc., is a corporation organized and existing under and by virtue of the laws of the State of New York with its principal office and place of business at 1400 Broadway, New York City, N. Y.

Respondent Samuel R. Parnes, Inc., is a corporation organized and existing under and by virtue of the laws of the State of New York with its principal office and place of business at 1400 Broadway, New York City, N. Y.

Respondent Gorgeous Frocks, Inc., is a corporation organized and existing under and by virtue of the laws of the State of New York with its principal office and place of business at 1400 Broadway, New York City, N. Y.

The respondents named in this paragraph will hereinafter be referred to as "seller respondents."

PAR. 4. Each of said seller respondents is engaged in the sale of merchandise to respondent C. R. Anthony Co., and to other customers in States other than the State of New York, pursuant to which sales merchandise is shipped and caused to be transported by each of said seller respondents into and through various States of the United States to their respective customers. Said seller respondents are fairly typical and representative members of a large group or class of manufacturers and sellers engaged in selling their merchandise in interstate commerce to respondent C. R. Anthony Co. and to its competitors, but the sellers comprising said group are too numerous to be specifically named herein or to be brought before the Commission in this proceeding without manifest inconvenience and delay.

PAR. 5. In the course of the purchasing transactions by the respondent C. R. Anthony Co., under the name of The Anco Co., as set forth in paragraph 2 hereof, said seller respondents and other sellers have since June 19, 1936, transmitted, paid, and delivered and do transmit, pay, and deliver to said respondent C. R. Anthony Co., under the name The Anco Co., so called brokerage fees and commissions, the same being a certain percentage on quoted sales prices agreed upon between each of the said sellers and the respondent C. R. Anthony Co., and said respondent C. R. Anthony Co., since June 19, 1936, has received and accepted and is receiving and accepting such so-called brokerage fees or commissions paid to it under the name of The Anco Co., upon merchandise purchased by said respondent C. R. Anthony Co., under the name of The Anco Co., while said

respondent C. R. Anthony Co., is the sole party in interest in and is the actual purchaser in said transaction.

In all of the purchasing transactions hereinabove referred to, in connection with which the so-called brokerage fees or commissions have been and are paid and transmitted by said seller respondents and other sellers and have been and are accepted and received by said respondent C. R. Anthony Co., no services whatsoever in connection with said purchases have been rendered or are now being rendered to, for, or on behalf of said seller respondent or any other sellers by said respondent C. R. Anthony Co. under its own name or under the name of The Anco Co.

PAR. 6. The transmission and payment of said so-called brokerage fees or commissions by the seller respondents and other sellers to and the receipt and acceptance thereof by the respondent C. R. Anthony Co. under the name of The Anco Co. in the manner and under the circumstances hereinabove set forth, is in violation of the provisions of section 2 (c) of the above-mentioned act of Congress entitled "An Act to supplement existing laws against unlawful restraints and monopolies and for other purposes," approved October 15, 1914 (the Clayton Act), as amended by the act of Congress entitled "An Act to amend section 2 of an act entitled 'An Act to supplement existing laws against unlawful restraints and monopolies and for other purposes,' approved October 15, 1914, as amended (U. S. C. title 15, sec. 13), and for other purposes," approved June 19, 1936 (the Robinson-Patman Act).

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an act of Congress entitled, "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914 (the Clayton Act), as amended by the Robinson-Patman Act, approved June 19, 1936 (title 15, Sec. 13), the Federal Trade Commission, on June 27, 1939, issued and served its complaint in this proceeding upon the parties respondent named in the caption hereof, charging them with violating the provisions of paragraph (c) of section 2 of the said act, as amended. After the issuance and service of said complaint, an answer admitting all of the material allegations as set forth in the complaint to be true was filed on behalf of the respondent, C. R. Anthony Co. Answers on behalf of all the other respondents were also duly filed, admitting in each instance that each respondent sold and shipped merchandise to the respondent, C. R. Anthony Co., and paid brokerage thereon to the Anco Co., but each answer, with the

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exception of that filed on behalf of the respondent, Gorgeous Frocks, Inc., denied knowledge that the Anco Co. was, in fact, the C. R. Anthony Co. The answer of Gorgeous Frocks, Inc., admitted all of the material facts set forth in the complaint.

Thereafter, the proceeding regularly came on for final hearing before the Commission on the said complaint and the answers filed thereon, and the Commission having duly considered the same and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes the following findings as to the facts and conclusion:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. That the respondent, C. R. Anthony Co., is a corporation under the laws of the State of Oklahoma, with its principal office and place of business at 540 First National Bank Building, Oklahoma City, Okla., owning and operating 57 retail department stores located in the States of Oklahoma, Kansas, Texas, and New Mexico.

PAR. 2. That respondent C. R. Anthony Co. also maintains an office in Room 1409 at 1450 Broadway, New York City, N. Y., under the name of The Anco Co. All maintenance expenses of said office, including salaries, are paid by the respondent, C. R. Anthony Co., and the functions of the said New York City office are wholly performed by employees of said respondent C. R. Anthony Co. on a flat salary basis paid solely by said respondent, which employees act for and in behalf of, and are subject to and under the direct and exclusive control of, said respondent C. R. Anthony Co.

That said employees purchase for, and in the name of, respondent C. R. Anthony Co. the requirements of its retail department stores, consisting of women's apparel, allied, and other merchandise from various sellers and manufacturers located in New York City, among whom are the seller respondents hereinafter named. The merchandise so purchased is then shipped by said sellers from New York City into and through the various States of the United States to the various retail department stores of the respondent, C. R. Anthony Co., invoices therefor being sent to and paid by said respondent C. R. Anthony Co.

PAR. 3. That respondent Burrell-Berger, Inc., is a corporation organized and existing under the laws of the State of New York, with its principal office and place of business at 1375 Broadway, New York City, N. Y.

That respondent Miss Plaza, Inc., is a corporation organized and existing under and by virtue of the laws of the State of New York, with its principal office and place of business at 1400 Broadway, New York City, N. Y.

That respondent Samuel R. Parnes, Inc., is a corporation organized and existing under and by virtue of the laws of the State of New York, with its principal office and place of business at 1400 Broadway, New York City, N. Y.

That respondent Gorgeous Frocks, Inc., is a corporation organized and existing under and by virtue of the laws of the State of New York, with its principal office and place of business at 1400 Broadway, New York City, N. Y.

The respondents named in this paragraph are hereinafter referred to as "seller respondents."

PAR. 4. That each of said seller respondents is engaged in the sale of merchandise to respondent C. R. Anthony Co. and to other customers in States other than the State of New York, pursuant to which sales merchandise is shipped and caused to be transported by each of said seller respondents into and through various States of the United States to their respective customers. The seller respondents are fairly representative of a large group of sellers engaged in manufacturing and selling women's apparel, allied, and other merchandise, which they sell and ship in interstate commerce to the respondent, C. R. Anthony Co., and to other purchasers thereof. Each of the seller respondents actively competes with other manufacturers and sellers of similar merchandise in distributing the same in interstate commerce to the respondent, C. R. Anthony Co., and its competitors.

PAR. 5. That in the course of the purchasing transactions by the respondent, C. R. Anthony Co., under the name of The Anco Co., said seller respondents and other sellers have, since June 19, 1936, transmitted, paid, and delivered, and do transmit, pay, and deliver, to said respondent C. R. Anthony Co. under the name, The Anco Co., so-called brokerage fees and commissions, the same being various percentages on quoted sales prices agreed upon between each of the said sellers and the respondent, C. R. Anthony Co., and said respondent C. R. Anthony Co., since June 19, 1936, has received and accepted, and is receiving and accepting, such so-called brokerage fees or commissions paid to it under the name of The Anco Co., upon merchandise purchased by said respondent C. R. Anthony Co., under the name of The Anco Co., while said respondent C. R. Anthony Co., is the sole party in interest in and is the actual purchaser in said transaction. That the respondents, Burrell-Berger, Inc., Miss Plaza, Inc., and Samuel R. Parnes, Inc., state in their answer that they were unaware that The Anco Co. was in fact the C. R. Anthony Co.

In all of the purchasing transactions hereinabove referred to, in connection with which the so-called brokerage fees or commissions

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have been, and are, paid and transmitted by said seller respondents and other sellers, and have been, and are, accepted and received by said respondent C. R. Anthony Co., no services whatsoever in connection with said purchases have been rendered, or are now being rendered, to, for, or in behalf of said seller respondent or any other sellers by said respondent C. R. Anthony Co., under its own name, or under the name of The Anco Co.

CONCLUSION

The Commission concludes that the respondents, Burrell-Berger, Inc., Miss Plaza, Inc., Samuel R. Parnes, Inc., and Gorgeous Frocks, Inc., have violated, and are now violating, subsection (c) of section 2 of the Clayton Act, as amended, by paying fees and commissions as brokerage to the respondent, C. R. Anthony Co., under the name of The Anco Co., upon the purchases of the respondent, C. R. Anthony Co.

The Commission further concludes that the respondent, C. R. Anthony Co., under the name of The Anco Co., has violated, and is violating, the provisions of said subsection (c) of section 2 of said statute by receiving and accepting fees and commissions paid as brokerage by and from the seller respondents and other sellers in connection with merchandise purchased by the respondent, C. R. Anthony Co., and further that the name of The Anco Co. as adopted and used by the respondent, C. R. Anthony Co. is an instrumentality and means by which the said respondent C. R. Anthony Co., has been and is enabled to receive and accept the same.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer filed herein by the respondent, C. R. Anthony Co., admitting all the material allegations of the complaint to be true, and the answers of the other respondents, and the Commission having made its findings as to the facts and its conclusion, which findings and conclusion are hereby made a part hereof, that said respondents have violated the provisions of an act of Congress entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes" approved October 15, 1914, as amended by the Robinson-Patman Act, approved June 19, 1936 (U.S.C. title 15, sec. 13).

It is ordered, That respondents Burrell-Berger, Inc., Miss Plaza, Inc., Samuel R. Parnes, Inc., Gorgeous Frocks, Inc., and their

officers, representatives, agents, and employees, in connection with the sale and distribution of any merchandise or commodities in interstate commerce, do forthwith cease and desist from paying or granting or causing or permitting to be paid or granted to the C. R. Anthony Co., its officers, representatives, agents, or employees, directly or under the name of The Anco Co., or in or under any other name, any fee or commission as brokerage or any allowance in lieu thereof, upon purchases made by the respondent, C. R. Anthony Co., in its own or any other name.

It is further ordered, That respondent C. R. Anthony Co., its officers, representatives, agents, and employees, in connection with the purchase by it of merchandise or commodities in interstate commerce to do forthwith cease and desist from receiving or accepting any fee or commission as brokerage or any allowance in lieu thereof in its own name, in the name of The Anco Co., or in any other name.

It is further ordered, That the respondents, and each of them, 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.

IN THE MATTER OF
WILLIAM EVERETTE, DOING BUSINESS AS W. E. & M. E.
MEDICINE COMPANY

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914

Docket 3087. Complaint, Mar. 24, 1937—Decision, Sept. 18, 1939

Where an individual engaged in selling and marketing medicinal preparation designated by him as "W. E. & M. E. Herb Tonic," to purchasers in other States, in substantial competition with others engaged in sale and distribution of like and similar products, or other products and treatments designed, intended, and used for similar purposes, in commerce among the various States; in advertising matter circulated, as aforesaid, to promote sale of his said "Herb Tonic," and which contained drugs prescribed by doctors for some of ills which it was represented to relieve, but with indicated dosage which did not give users amounts of such drugs, even as laxative, as recommended by medical profession in most cases—

- (a) Represented that use of said preparation purified the blood and relieved all acute pains, and that it contained no harmful ingredients, facts being protracted use thereof might be injurious to health and cause undesirable results, and said preparation would not purify the blood, but therapeutic value thereof was limited to the efficacy of its laxative properties, and it would not relieve all acute pains;
- (b) Represented that said product relieved constipation, facts being it had no therapeutic value in treatment of said condition other than affording, in some cases, temporary relief therefrom;
- (c) Represented that said preparation was a male and female body builder, facts being it was not such a body builder in the sense that it would stimulate sexual organs or sex systems;
- (d) Represented that said preparation had therapeutic value in treatment of hemorrhoids, facts being it had no therapeutic value in treatment of said condition, other than affording, in some cases, temporary relief therefrom;
- (e) Represented that said preparation had therapeutic value in treatment of chills, fever, and disorders of the skin, facts being it had no such value, other than affording in some cases, temporary relief therefrom when such conditions were due to constipation;
- (f) Represented that said preparation was a remedy for and would relieve backache or disorders of the liver or kidneys, facts being it was not such a remedy and would not accomplish such results, and had no substantial therapeutic value in affording relief from such conditions; and
- (g) Represented that said preparation was a remedy for disorders of the stomach, indigestion and cramp, and constituted a cure for the menopause, and would relieve sufferings caused thereby, facts being it was not such a remedy or cure for said condition and would not relieve such sufferings;

With capacity and tendency to mislead and deceive substantial portion of purchasing public into erroneous and false belief that said representations were true, and to induce number of said public to buy substantial quantity of said product, which they would not, absent such belief, purchase, and, as