

Complaint

IN THE MATTER OF

JACK HERZOG, MICHAEL HERZOG, GEORGE HERZOG
AND LOUIS HERZOG, TRADING AS JACK HERZOG
AND COMPANY

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SUBSEC. (c) OF SEC. 2 OF AN ACT OF CONGRESS APPROVED OCT. 15, 1914,
AS AMENDED

Docket 4257. Complaint, Aug. 22, 1940—Decision, July 8, 1942

Where four individuals, engaged in New York City as commission resident buyers of fur garments for some 80 retailers and department stores in the several States, who placed their orders to the amount of \$600,000 to \$800,000 annually with said individuals, together with general specifications as to size, style, quality, and price, and who, in thus making such purchases through said individuals in said fur garment center of the United States, of representative competitive sellers, manufacturers and wholesalers, were themselves in competition with other fur garment retailers and department stores who maintained buying offices, retained the services of fur garment buyers or "fee" buyers, or sent representatives to said city to make fur garment purchases—

Received and accepted from sellers, compensation amounting to a certain percentage, which was usually five, of the agreed sales price on said purchases by said fur garment retailers and department stores whose buying representatives or other intermediaries said individuals in fact were:

Held, That such receipt and acceptance, and payment of brokerage fees and commissions, as above set forth, constituted a violation of the provisions of subsection (c) of Section 2 of the Clayton Act, as amended by the Robinson-Patman Act.

Mr. Edward S. Ragsdale for the Commission.

Mr. Alfred McCormack and *Mr. Harmon Duncombe*, of the firm of *Cravath, DeGersdorff, Swaine & Wood*, of New York City, for respondents.

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) of 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. Respondents, Jack Herzog, Michael Herzog, George Herzog, and Louis Herzog, are individuals, trading under the name Jack Herzog & Co., with their principal office and place of business located at 337 Seventh Avenue, New York, N. Y. Said respondents

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are engaged in business as commission resident buyers of fur garments. In the course of their said business respondents act as agents for the purchase of fur garments for and in behalf of approximately 80 fur garment retailers and department stores located in the several States of the United States, such purchases aggregating an annual volume of \$600,000 to \$800,000.

The manner of operation of respondents' business consists in receiving from one of said fur garment retailers or department stores orders or requisitions to purchase fur garments upon general specifications as to size, style; quality and price. When such orders are received by respondents they call upon various fur garment manufacturers and place the order at the most advantageous price from the standpoint of the buyer. Generally the manufacturer ships the fur garments so purchased direct to the retailer-purchaser, although in some instances delivery is arrested to permit inspection of the garments by respondents at their place of business.

On such purchase orders respondents generally receive from sellers a commission of 5 per cent. On occasions when retailers whom respondents have represented place orders directly with fur garment manufacturers, respondents seek to, and on occasions do, secure commissions from the sellers on such orders.

New York City is the center of the fur garment industry in the United States and fur garment retailers and department stores located in other States of the United States undergo expenditure of a certain proportion of their total sales volume to cover cost of purchasing fur garments from the New York City fur garment market. In the course and conduct of their business respondents represent fur garment retailers who are in competition with other fur garment retailers who undergo buying expense by maintaining buying offices, retain the services of fur garment buyers known as "fee" buyers, or send representatives to New York City to make fur garment purchases.

PAR. 2. In the course and conduct of their business, respondents place orders for fur garments with many manufacturers located in New York, N. Y., on behalf of retailers located in various States of the United States, pursuant to which fur garments are shipped and caused to be transported by said sellers from New York, N. Y., into and through various States of the United States to their respective customers.

PAR. 3. In the course of the purchasing transactions by the respondents, as set forth in paragraph 1 hereof, said sellers have, since June 19, 1936, transmitted, paid and delivered and do transmit, pay and deliver to said respondents commissions, the same being a certain

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percentage of the sales price agreed upon between each of the said sellers and the respondents on the orders for merchandise placed by the respondents for their principals; and said respondents, since June 19, 1936, have received and accepted and are receiving and accepting such commissions on purchases of merchandise by some 80 fur garment retailers and department stores who are the actual purchasers in such transactions and in whose behalf said respondents have been and are, in fact, acting.

PAR. 4. The foregoing acts and practices are in violation of Subsection (c) of Section 2 of the Clayton Act, as amended.

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 an act of Congress approved June 19, 1936 (the Robinson-Patman Act) (U. S. C., Title 15, Sec. 13), the Federal Trade Commission on August 22, 1940, issued and subsequently served its complaint in this proceeding upon the parties respondent named in the caption hereof, charging said respondents with violation of the provisions of subsection (c) of Section 2 of said Clayton Act, as amended. After the issuance of said complaint and the filing of respondents' answer, the Commission entered its order granting respondents' motion for permission to withdraw said answer and to substitute therefor an answer admitting all the material allegations of fact set forth in said complaint and waiving all intervening procedure and further hearings as to said facts. The respondents have also waived oral argument and the filing of briefs.

Thereafter, this proceeding regularly came on for final hearing before the Commission on the said complaint and substitute answer, and the Commission having duly considered the same and being now fully advised in the premises, makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondents, Jack Herzog, Michael Herzog, George Herzog, and Louis Herzog, are individuals, trading under the name Jack Herzog & Co., with their principal office and place of business located at 337 Seventh Avenue, New York, N. Y. Said respondents are engaged in the business as commission resident buyers of fur garments. In the course of their said business respondents act as agents for the purchase of fur garments for and in behalf of approximately

80 fur garment retailers and department stores located in the several States of the United States, such purchases aggregating an annual volume of \$600,000 to \$800,000.

The manner of operation of respondents' business consists in receiving from fur garment retailers or department stores, orders or requisitions to purchase fur garments or other commodities upon general specifications as to size, style, quality, and price. When such orders are received by respondents they call upon various fur garment manufacturers and wholesalers and place the order with a manufacturer or wholesaler offering the most advantageous price from the standpoint of the buyer. Generally, the manufacturer or wholesaler ships the fur garments so purchased direct to the retailer-purchaser, although in some instances delivery is arrested to permit inspection of the garments by respondents at their place of business.

On such purchase orders respondents generally receive from sellers a commission of 5 percent. On occasions when retailers whom respondents have previously represented, place orders thereafter directly with fur garment manufacturers or wholesalers, respondents seek to, and on occasions do, secure commissions from the sellers on such orders.

New York City is the center of the fur garment industry in the United States, and fur garment retailers and department stores located in other States of the United States undergo expenditure of a certain proportion of their total sales volume to cover cost of purchasing fur garments from the New York City fur garment market. In the course and conduct of their business respondents represent fur garment retailers who are in competition with other fur garment retailers who undergo buying expense by maintaining buying offices, retain the services of fur garment buyers known as "fee" buyers, or send representatives to New York City to make fur garment purchases.

PAR. 2. In the course and conduct of their business, respondents place orders for fur garments with many manufacturers and wholesalers located in New York, N. Y., on behalf of retailers located in various States of the United States, pursuant to which fur garments are shipped and caused to be transported by said sellers from New York, N. Y., into and through various States of the United States to their respective customers.

PAR. 3. In the course of the aforesaid transactions of purchase sellers have, since June 19, 1936, transmitted, paid and delivered and do transmit, pay and deliver to said respondents, commissions, the same being a certain percentage of the sales price agreed upon between each of the said sellers and the respondents on the orders for merchandise placed by the respondents for their principals; and said respondents have received and accepted and are receiving and accepting

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such commissions on purchases of merchandise by some eighty fur garment retailers and department stores who are the actual purchasers in such transactions and in whose behalf said respondents have been and are, in fact, acting.

CONCLUSION

Under the facts and circumstances set forth in the foregoing findings as to the facts, the Commission concludes, that the respondents, Jack Herzog, Michael Herzog, George Herzog, and Louis Herzog, individually, and trading as Jack Herzog & Co., are engaged in business in commerce as agents, buying representatives, or other intermediaries in connection with the buying, from representative competitive sellers, manufacturers, and wholesalers of fur garments for many retail fur outlets or client buyers and have acted in fact for, or in behalf of, or under the direct or indirect control of such buyers in purchasing fur garments from said representative competitive sellers, manufacturers and wholesalers, and that in the course of such commerce and while acting in fact as agents, buying representatives or other intermediaries in connection with the buying of fur garments or other commodities for such purchasers did receive remuneration in the form of commissions or otherwise from such representative competitive sellers, manufacturers, and wholesalers from whom respondents purchased such fur garments for such retail fur outlets or client buyers in violation of the provisions of subsection (c) of Section 2 of "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 an act of Congress approved June 19, 1936 (the Robinson-Patman Act) (U. S. C., Title 15, Sec. 13).

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the substitute answer of respondents, Jack Herzog, Michael Herzog, and Louis Herzog, individually, and trading as Jack Herzog & Co., which answer admits all of the material allegations of the complaint to be true and waives all other intervening procedure and further hearing as to said facts, and the Commission having made its findings as to the facts and conclusion herein that said respondents, Jack Herzog, Michael Herzog, George Herzog, and Louis Herzog, individually, and trading as Jack Herzog and Co., have violated the provisions of "An act to supplement existing laws against unlawful restraints and monopolies, and for other purposes" approved October 15, 1914 (the Clayton Act); as

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amended by an act of Congress approved June 19, 1936 (the Robinson-Patman Act) (U. S. C. Title 15, Sec. 13).

It is ordered, That the respondents, Jack Herzog, Michael Herzog, George Herzog, and Louis Herzog, individually, and trading as Jack Herzog & Co., or under any other name, jointly or severally, their agents, employees, and representatives, directly or through any corporate or other device in or in connection with the purchasing of furs, fur garments, or other commodities in commerce, as commerce is defined in the aforesaid Clayton Act, as amended, do forthwith cease and desist from:

Receiving or accepting directly or indirectly anything of value as brokerage, commission, or other compensation or any allowance or discount in lieu thereof from any seller on or in connection with purchase made from such seller (a) when such purchases are made for respondents' own account, or (b) when such purchases are made as agent or buying representative of the purchaser, or (c) when in making such purchases respondents are acting in fact for or in behalf, or are subject to the direct or indirect control, of the purchaser.

It is further ordered, That the respondents 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.

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IN THE MATTER OF

CENTRAL BUYING SERVICE, INC.

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SUBSEC. (c) OF SEC. 2 OF AN ACT OF CONGRESS APPROVED OCT. 15, 1914, AS AMENDED

Docket 4259. Complaint, Aug. 22, 1940—Decision, July 8, 1942

Where a corporation, engaged in New York City as resident commission buyer in providing information, facilities, and purchasing services to operators of retail stores or buyers of commodities such as millinery, engaged in resale thereof through retail stores or departments thereof which they operated, and in executing their orders—either following instructions or exercising their own judgment as to details—by transmitting them to seller manufacturers, competitively engaged with other manufacturers and wholesalers, who shipped the goods to the buyer for whose account the purchases were made, and billed him and received payment direct—

Received and accepted from sellers on merchandise purchased by it for and on behalf of aforesaid buyers, and while acting in fact as their agent, buying representative, or other intermediary, commissions varying from 3 to 7 percent of the sales price of the goods thus purchased:

Held, That such receipt and acceptance, and payment of brokerage fees and commissions, as above set forth, constituted a violation of the provisions of subsection (c) of Section 2 of the Clayton Act, as amended by the Robinson-Patman Act.

Mr. Edward S. Ragsdale for the Commission.

Mr. Alfred McCormack and *Mr. Harmon Duncombe*, of the firm of Cravath, DeGersdorff, Swaine & Wood, of New York City, for respondent.

COMPLAINT

The Federal Trade Commission having reason to believe that the party respondent named in the caption hereof and hereinafter more particularly designated has, since June 19, 1936, violated and is now violating the provisions of subsection (c) Section 2, of the Clayton Act, as amended by the Robinson-Patman Act, approved June 19, 1936, c. 592, Section 1, 49 Stat, 1526 (15 U. S. C. A. 13 (c)), hereby issues its complaint:

PARAGRAPH 1. Central Buying Service, Inc., is a corporation organized and existing under the laws of the State of New York, with its principal place of business located at 101 West Thirty-Seventh Street, New York, N. Y.

PAR. 2. Respondent is a resident commission buyer and since the date of its incorporation has been and is now engaged in the business of providing information, facilities, and purchasing services to a number