

IN THE MATTER OF

LEWIS BLOCK, FRANK BLOCK, MAC GOLDBERG, OTTO LANGER, MORRIS BLOCK, AND DORA BLOCK, TRADING AS STYLE & MERIT BUYING SERVICE

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 4249. Complaint, Aug. 21, 1940—Decision, Aug. 17, 1942

Where six partners, who engaged in New York City in soliciting the business of purchasing, free of charge, the merchandise requirements of retail organizations in New York and other States, contacting a large number of manufacturers of ladies' and children's ready-to-wear, leather goods and accessories, furs, and fur coats in New York, Pennsylvania, and other eastern States, and searching the market in order to obtain at the lowest possible prices the exact merchandise ordered by retail buyer-clients—

Received, from competitive sellers, manufacturers, and wholesalers of fur garments for many retail fur outlets of client-buyers upon purchases made for their said buyer-clients, brokerage fees which amounted to from 2 to 5 percent of the price of the merchandise, while acting in fact for or in behalf of or under the direct or indirect control of such buyers and as their buying representatives:

Held, That such receipt of compensation in the form of commission on purchases from competitive sellers constituted a violation of subsection (c) of Section 2 of the Clayton Act as amended by the Robinson-Patman Act.

Mr. A. W. DeBirny and *Mr. Edward S. Ragsdale* for the Commission.

Mr. Alfred McCormack, *Mr. Harmon Duncombe* and *Mr. Douglas L. Hatch*, 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 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, Lewis Block, Frank Block, Mac Goldberg, Otto Langer, Morris Block, and Dora Block, are copartners, doing business under the firm name of Style & Merit Buying Service, and have their office and place of business at 225 West Thirty-fourth Street, New York, N. Y.

Complaint

Articles of Copartnership are duly recorded and said firm name duly registered under the laws of the State of New York. Said Articles state the purpose of the formation of said copartnership to be:

To conduct the business of buying and purchasing any and all commodities of whatsoever nature for the benefit of any and all accounts, organizations, associations, manufacturers, department and retail stores, and other organizations of a similar nature on a commission basis.

Said respondents will hereinafter be referred to as copartners respondent.

PAR. 2. Since January of 1939 said copartners respondent have solicited the business of purchasing free of charge the merchandise requirements of a number of retail stores and organizations located in New York State and other States and have advertised to the trade generally a performance by them of complete buying service. As a result of such solicitation and advertising a number of persons, firms, and corporations owning and operating retail stores have engaged copartners respondent to purchase their requirements for them from various manufacturers and sellers thereof. No such purchases are ever made by copartners respondent until and unless requisitions or orders for specific merchandise are received from said buyer clients of copartners respondent. After the receipt of such orders or requisitions it is the consistent practice of copartners respondent to then search the market and contact various manufacturers and sellers in order to obtain the exact merchandise so ordered by said buyers and at the lowest possible prices. The sellers and manufacturers so contacted by copartners respondent comprise a large number of persons, firms, and corporations engaged in the manufacture and sale of ladies' and children's ready-to-wear, leather goods, and accessories, furs and fur coats, and are located in the States of New York and Pennsylvania and other States in the eastern part of the United States.

PAR. 3. Said sellers and manufacturers are engaged in the sale and distribution in commerce of the various merchandise hereinabove described to the buyers represented by copartners respondent and to other customers located in New York State and other States and, pursuant to purchases made by copartners respondent for their buyer clients, merchandise is shipped and caused to be transported by such sellers and manufacturers from their respective factories and places of business into and through the State of New York and into and through the various States of the United States to said buyers and to their competitors.

PAR. 4. Since January of 1939 said copartners respondent have purchased in interstate commerce in excess of \$1,000,000 yearly merchandise for, and rendered buying services to, the said buyer clients and

upon the purchases so made brokerage fees or commissions of 2 to 5 percent of the price of such merchandise, amounting in the aggregate to more than \$16,000 per annum, have been charged and transmitted to and received by said copartners respondent from various sellers and manufacturers. In some instances said brokerage fees or commissions are remitted direct to copartners respondent by sellers of said merchandise and in other instances said brokerage fees or commissions are deducted by said buyer clients from the sales price of such merchandise and are remitted by said buyer clients to said copartners respondent. A substantial part of said brokerage fees and commissions has been used by said copartners respondent to defray the expenses of and pay bills for some of their said buyer clients.

PAR. 5. In all of said purchasing transactions hereinabove described and referred to in connection with which the brokerage fees or commissions have been paid, and are paid and transmitted by the said sellers and manufacturers to, and have been and are accepted and received by, said copartners respondent, said copartners respondent have been and are agents acting in fact for and in behalf of their said buyer clients and were and are generally rendering to such buyer clients all of the buying services required by them and customarily rendered by a buying agent to and for his principals.

PAR. 6. The transmission and payment of the brokerage fees and commissions by the various sellers and manufacturers to, and the receipt and acceptance thereof by, said copartners respondent in the manner and in the circumstances hereinabove set forth, is in violation of the provisions of Section 2(c) of the above mentioned Act of Congress, as amended (U. S. C., Title 15, Sec. 13).

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provision 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 21, 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

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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, Lewis Block, Frank Block, Mac Goldberg, Otto Langer, Morris Block, and Dora Block, are copartners doing business under the firm name of Style & Merit Buying Service, and have their office and place of business at 225 West Thirty-fourth Street, New York, N. Y.

Articles of Copartnership are duly recorded and said firm name duly registered under the laws of the State of New York. Said Articles state the purpose of the formation of said copartnership to be:

To conduct the business of buying and purchasing any and all commodities of whatsoever nature for the benefit of any and all accounts, organizations, associations, manufacturers, department and retail stores, and other organizations of a similar nature on a commission basis.

Said respondents will hereinafter be referred to as copartners respondent.

PAR. 2. Since January of 1939 said copartners respondent have solicited the business of purchasing free of charge the merchandise requirements of a number of retail stores and organizations located in New York State and other States and have advertised to the trade generally a performance by them of complete buying service. As a result of such solicitation and advertising a number of persons, firms, and corporations owning and operating retail stores have engaged copartners respondent to purchase their requirements for them from various manufacturers and sellers thereof. No such purchases are ever made by copartners respondent until and unless requisitions or orders for specific merchandise are received from said buyer clients of copartners respondent. After the receipt of such orders or requisitions it is the consistent practice of copartners respondent to then search the market and contact various manufacturers and sellers in order to obtain the exact merchandise so ordered by said buyers and at the lowest possible prices. The sellers and manufacturers so contacted by copartners respondent comprise a large number of persons, firms, and corporations engaged in the manufacture and sale of ladies' and children's ready-to-wear, leather goods, and accessories, furs and

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fur coats, and are located in the States of New York and Pennsylvania and other States in the eastern part of the United States.

PAR. 3. Said sellers and manufacturers are engaged in the sale and distribution in commerce of the various merchandise hereinabove described to the buyers represented by copartners respondent and to other customers located in New York State and other States and, pursuant to purchases made by copartners respondent for their buyer clients, merchandise is shipped and caused to be transported by such sellers and manufacturers from their respective factories and places of business into and through the State of New York and into and through the various States of the United States to said buyers and to their competitors.

PAR. 4. Since January of 1939 said copartners respondent have purchased in interstate commerce in excess of \$1,000,000 yearly merchandise for, and rendered buying services to, the said buyer clients and upon the purchases so made brokerage fees or commissions of 2 to 5 percent of the price of such merchandise, amounting in the aggregate to more than \$16,000 per annum, have been charged and transmitted to and received by said copartners respondent from various sellers and manufacturers. In some instances said brokerage fees or commissions are remitted direct to copartners respondent by sellers of said merchandise and in other instances said brokerage fees or commissions are deducted by said buyer clients from the sales price of such merchandise and are remitted by said buyer clients to said copartners respondent. A substantial part of said brokerage fees and commissions has been used by said copartners respondent to defray the expenses of and pay bills for some of their said buyer clients.

PAR. 5. In all of said purchasing transactions hereinabove described and referred to in connection with which the brokerage fees or commissions have been paid, and are paid and transmitted by the said sellers and manufacturers to, and have been and are accepted and received by, said copartners respondent, said copartners respondent have been and are agents acting in fact for and in behalf of their said buyer clients and were and are generally rendering to such buyer clients all of the buying services required by them and customarily rendered by a buying agent to and for his principals.

CONCLUSION

Under the facts and circumstances set forth in the foregoing findings as to the facts, the Commission concludes that the respondents, Lewis Block, Frank Block, Mac Goldberg, Otto Langer, Morris Block, and Dora Block, copartners, doing business under the firm name Style &

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Merit Buying Service individually and as copartners, 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, Lewis Block, Frank Block, Mac Goldberg, Otto Langer, Morris Block, and Dora Block, copartners, doing business under the firm name Style & Merit Buying Service, individually and as copartners, 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, Lewis Block, Frank Block, Mac Goldberg, Otto Langer, Morris Block, and Dora Block, copartners, doing business under the firm name Style & Merit Buying Service, individually and as copartners, 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 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, Lewis Block, Frank Block, Mac Goldberg, Otto Langer, Morris Block, and Dora Block, copartners, doing business under the firm name Style & Merit Buying Service, individually and as copartners, or under any other name, jointly or severally, their agents, employees, and representatives, directly or

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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 purchases 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.

Syllabus

IN THE MATTER OF

J. FREIDSON SHOE COMPANY

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 23, 1914

Docket 4632. Complaint, Nov. 13, 1941—Decision, Aug. 18, 1942

Where a corporation, engaged at wholesale in the interstate sale and distribution of shoes, particularly children's shoes—

- (a) Stamped "Dr. Chase's Cushion Comfort" on the soles of said line of shoes, and in 1939 added a period to the die so that the designation, while modified to read "D. R. Chase's Cushion Comfort," had appearance of the original due to the impossibility of discerning separation between the "D" and "R";
- (b) Furnished to the manufacturer labels which were attached to the lining of certain of its said shoes bearing the unaltered original designation;
- (c) Set forth said original designation on heel pads of certain shoes and, beginning in 1939 modified it to "D Chases Health Shoes";
- (d) Set forth prior to 1939 on boxes enclosing said children's shoes aforesaid original designation and such statements as "Dr. Chase's Health Shoes—Designed and built for growing feet," "Dr. Chase's Shoes are scientifically designed with wide treads, narrow heels, and sturdy, flexible soles that will develop your children's foot muscles as Nature dictates," "Genuine Dr. Chase's shoes carry the diamond trade-mark. Look for it"; and subsequent to 1939 modified said designation to "The Chase's Cushion Comfort" and said statements to "Chase's Health Shoes designed and built for growing feet," "Chase's Cushion Comfort Shoes are scientifically designed," etc., and "Genuine Chase's Cushion Comfort Shoes carry the diamond trade-mark. Look for it," referring, through aforesaid invitation "to look for" said trade-mark, to the imprints on soles and lining label above referred to; and
- (e) Made use in its catalogues of illustrations of its said shoes which frequently showed label "Dr. Chase's" notwithstanding frequent reference thereto in said catalogues as "D. R. Chase's"; and made use of original designation "Dr. Chase's Cushion Comfort" on invoices and letterheads;

Notwithstanding fact shoes thus marked, labeled, designated, and described were not designed or approved by any doctor or orthopedic specialist, nor was their design or construction supervised or approved by any such person; they had no special health or orthopedic features, but were made precisely as were shoes of similar grade and quality made by the manufacturer for its other customers;

With the result of placing in the hands of dealers an instrumentality whereby they might mislead and deceive the purchasing public with respect to the design and corrective features of said products; and with capacity and tendency to divert business from those who do not mark, label, designate, and describe their shoes in such manner, and to mislead and deceive a substantial portion of the purchasing public into the mistaken belief that said representations were true, whereby it was induced to purchase substantial quantities of said shoes: