

Complaint

IN THE MATTER OF
ARTHUR M. FLORMAN AND LEO FLORMAN TRADING
AS A. M. FLORMAN & BRO.

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 BY AN ACT APPROVED JUNE 19, 1936

Docket 4227. Complaint, Aug. 7, 1940—Decision, Mar. 19, 1945

Where two individuals engaged in New York City as commission resident buyers of millinery for some 40 retailer millinery and department stores in various States—in competition with buying offices maintained in said center by similar millinery dealers and department stores, and with "Fee" buyers regularly employed and compensated by such organizations—through locating and placing with a particular one of a large number of manufacturers and sellers of millinery competitively engaged in said city, orders which met the general requirements as to style, price, etc. of particular customers and which, along with invoice, bill, delivery and other necessary documents of sale, specified the name of the purchaser and recorded the transaction as though he had made the purchase in person—

Received and accepted from said manufacturers and sellers, commissions consisting of a certain percentage of the sales prices agreed upon between each of them and said individuals in the orders for merchandise placed by latter for their principals, which said manufacturers transmitted, paid and delivered to said individuals on the purchases of merchandise by the aforesaid 40 retail millinery and department stores who were the actual purchasers in such transactions and in whose behalf said individuals were in fact acting:

Held, That such receipt of remuneration in the form of commissions from competitive sellers, manufacturers and wholesalers from whom said individuals purchased millinery and other commodities for such buyers or client buyers, was in 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.
Kaufman & Cronan, 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, Arthur M. Florman and Leo Florman, are individuals, trading under the name A. M. Florman & Bro. with their principal office and place of business located at 134 West 32nd Street, New York, N. Y. Said respondents, Arthur M. Florman and Leo Florman, are engaged in business as commission resident buyers of millinery. In the course of their said business, respondents act as purchasing agents for and

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in behalf of approximately 40 retail millinery and department stores located in the several States of the United States.

The manner of operation of respondents' business consists in receiving from one of said retail millinery or department stores a request to order certain millinery having general specifications as to size, color, style, quantity and approximate price. Respondents locate a millinery manufacturer, and on behalf of the proposed purchaser place an order for millinery meeting the general requirements of the initial request. The order upon the manufacturer specifies the name of the purchaser and an order blank, invoice, bill, delivery and other necessary documents of sale all record the transaction between the manufacturer and the purchaser as though the purchaser has made the purchase in person.

New York City is the center of the millinery industry in the United States and retail millinery dealers and department stores located in other States of the United States undergo the expenditure of a certain proportion of their dollar sales volume to cover the cost of purchasing millinery from the millinery center in New York City. In the course and conduct of their business respondents are in direct competition with buying offices maintained in New York City by millinery dealers and department stores located in various States of the United States, and with buyers known as "Fee" buyers who are regularly employed and compensated by retail milliners and department stores from other States buying in New York City.

Among the retailers of millinery for whom respondents act as buying agents are Sydney Fruhman, doing business as Sydney Fruhman Millinery Company, Dallas, Tex.; Bradshaw Millinery Company, Charlotte, N. C.; A. W. Cox Department Store, Parkersburg, W. Va.; Friedlander Corporation, Moultrie, Ga.; R. C. Brown, Norfolk, Va.; Gordon's Department Store, Winona, Miss.; Haig Millinery, Warren, Iowa; Handelsman Bros., Marlin, Tex.; J. N. McCracken, Billings, Mont.; L. B. Murphy, Casper, Wyo.; Gorin's, Inc., Fall River, Mass.; K. Wolins, Tyler, Tex.; H. E. Norland, Burwell, Nebr.; Golden Rule Store, Shadron, Nebr.; The Fashion, Waycross, Ga.; Fair Store, Lexington, Ky.; and J. P. Croff, Rexburg, Idaho.

PAR. 2. In the course and conduct of their business respondents place orders for millinery with 25 or more manufacturers of millinery located in New York City. Among such manufacturers are the following: Alben Hat Company, Dandy Hat Company, Gildor Hat Company, Gold Seal Hat Company, Sam Way, Inc., Braeburn Company, Wel-rose Hat Corporation, Elwyn Hat Company, Wank & Levine, Atlas Hat Company, Salfair, Inc., M. Barsky, Melvina Hat Company, Parad Hat Company, Jeanar Hat Company, Climax Hat Company, King Innovations Company, Georgeman Hats, Greenburg Bros., Joe-Marr Hat Company, Jaymore Hats, Kass Bros. Mfg. Co., Inc., and Biltmore Hat Corporation.

The manufacturers named in this paragraph are hereinafter referred to as "sellers."

PAR. 3. Each of said sellers is engaged in the sale of millinery to the retailer principals of respondents, Arthur M. Florman and Leo Florman, and to other customers in States other than the State of New York, pursuant to which sales, millinery is shipped and caused to be transported by each of said sellers into and through various States of the United States to their respective customers. Said sellers are fairly typical and representative members of a large group of manufacturers and sellers engaged in

selling their merchandise in interstate commerce to retailer clients of respondents, Arthur M. Florman and Leo Florman, and to competitors of said respondents, being the buying offices and "Fee" buyers maintained in New York City by retail milliners and department stores doing business in other States of the United States.

In the course of the purchasing transactions by the respondents, Arthur M. Florman and Leo Florman, under the name A. M. Florman & Bro., 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, Arthur M. Florman and Leo Florman, under the name A. M. Florman & Bro., commissions, the same being a certain percentage of the sales prices agreed upon between each of the said sellers and the respondents in 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 40 retail millinery and department stores who are the actual purchasers in such transactions, and in whose behalf said Arthur M. Florman and Leo Florman 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 the Robinson-Patman Act, approved June 19, 1936 (U.S.C. Title 15, Sec. 15), The Federal Trade Commission on August 7, 1940, issued and thereafter served its complaint in this proceeding upon the parties respondent named in the caption hereof, charging said respondents with violating the provisions of subsection (c) of section 2 of said act as amended. After the issuance of said complaint the respective respondents in due course filed their answer to said complaint, in which answer the respondents denied that their acts and practices were in violation of subsection (c) of section 2 of the Clayton Act as amended. Thereafter the respective respondents, through their counsel, requested and received permission from the Commission to withdraw their original answer and to file in lieu thereof an answer admitting all material allegations of fact set forth in said complaint, and waiving all intervening procedure as to said facts, and expressly waiving the filing of briefs and oral argument.

Thereafter, this proceeding regularly came on for final hearing before the Commission on said complaint and 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. That respondents, Arthur M. Florman and Leo Florman, are individuals, trading under the name A. M. Florman & Bro. with their principal office and place of business located at 134 West 32nd Street, New York, N. Y. Said respondents, Arthur M. Florman and Leo Florman, are engaged in business as commission resident buyers of millinery. In the course of their said business, respondents act as purchasing agents

for and in behalf of approximately 40 retail millinery and department stores located in the several States of the United States.

That the manner of operation of respondents' business consists in receiving from one of said retail millinery or department stores a request to order certain millinery having general specifications as to size, color, style, quantity and approximate price. Respondents locate a millinery manufacturer, and on behalf of the proposed purchaser place an order for millinery meeting the general requirements of the initial request. The order upon the manufacturer specifies the name of the purchaser, and an order blank, invoice, bill, delivery and other necessary documents of sale all record the transactions between the manufacturer and the purchaser as though the purchaser has made the purchase in person.

That New York City is the center of the millinery industry in the United States and retail millinery dealers and department stores located in other States of the United States undergo the expenditure of a certain proportion of their dollar sales volume to cover the cost of purchasing millinery from the millinery center in New York City. In the course and conduct of their business respondents are in direct competition with buying offices maintained in New York City by millinery dealers and department stores located in various States of the United States, and with buyers known as "Fee" buyers who are regularly employed and compensated by retail milliners and department stores from other States buying in New York City.

That among the retailers of millinery for whom respondents act as buying agents are Sydney Fruhman, doing business as Sydney Fruhman Millinery Company, Dallas, Tex.; Bradshaw Millinery Company, Charlotte, N. C.; A. W. Cox Department Store, Parkersburg, W. Va.; Friedlander Corporation, Moultrie, Ga.; R. C. Brown, Norfolk, Va.; Gordon's Department Store, Winona, Miss.; Haig Millinery, Warren, Iowa; Handelman Bros., Marlin, Tex.; J. N. McCracken, Billings, Mont.; L. B. Murphy, Casper, Wyo.; Gorin's, Inc., Fall River, Mass.; K. Wolins, Tyler, Tex.; H. E. Norland, Burwell, Nebr.; Golden Rule Store, Shadron, Nebr.; The Fashion, Waycross, Ga.; Fair Store, Lexington, Ky.; and J. P. Groff, Rexburg, Idaho.

PAR. 2. That in the course and conduct of their business respondents place orders for millinery with a large number of manufacturers of millinery located in New York City. Among and representative of such manufacturers are the following: Alben Hat Company, Dandy Hat Company, Gildor Hat Company, Gold Seal Hat Company, Sam Way, Inc., Braeburn Company, Wel-rose Hat Corporation, Elwyn Hat Company, Wank & Levine, Atlas Hat Company, Salfair, Inc., M. Barsky, Melvina Hat Company, Parad Hat Company, Jeanar Hat Company, Climax Hat Company, King Innovations Company, Georgeman Hats, Greenburg Bros., Joe-Marr Hat Company, Jaymore Hats, Kass Bros. Mfg. Co., Inc., and Biltmore Hat Corporation.

The manufacturers named in this paragraph are hereinafter referred to as "sellers."

PAR. 3. That each of said sellers is engaged in the sale of millinery to the retailer principals of respondent, Arthur M. Florman and Leo Florman, and to other customers in States other than the State of New York, pursuant to which sales, millinery is shipped and caused to be transported by each of said sellers into and through various States of the United States to their respective customers. Said sellers are fairly typical and represen-

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tative members of a large group of manufacturers and sellers engaged in selling their merchandise in interstate commerce to retailer clients of respondents, Arthur M. Florman and Leo Florman and to competitors of said respondents, being the buying offices and "Fee" buyers maintained in New York City by retail milliners and department stores doing business in other States of the United States.

That in the course of the purchasing transactions by the respondents, Arthur M. Florman and Leo Florman, under the name A. M. Florman & Bro., 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, Arthur M. Florman and Leo Florman, under the name A. M. Florman & Bro., commissions, the same being a certain percentage of the sales prices agreed upon between each of the said sellers and the respondents in 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 40 retail millinery and department stores who are the actual purchasers in such transactions, and in whose behalf said Arthur M. Florman and Leo Florman have been and are in fact acting.

CONCLUSION

From the aforesaid facts and circumstances the Commission concludes that respondents, Arthur M. Florman and Leo Florman, individually, and trading as A. M. Florman & Bro., are engaged as agents, buying representatives, or other intermediaries in the purchase of millinery from representative competitive sellers, manufacturers and wholesalers of millinery and have acted in fact for or in behalf of, or under the direct or indirect control of, such buyers in purchasing millinery 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 millinery or other commodities for such purchasers did receive remuneration in the form of commissions, brokerage fees, or otherwise, from such representative competitive sellers, manufacturers, and wholesalers from whom respondents purchased such millinery and other commodities for such buyers 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 answer of respondents, Arthur M. Florman and Leo Florman, individually and trading as A. M. Florman & Bro., 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, Arthur M. Florman and Leo Florman, individually, and trading as A. M. Florman & Bro., have violated the provisions of subsection (c) of section 2 of "An act

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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, Arthur M. Florman and Leo Florman, individually, and trading as A. M. Florman & Bro., 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 millinery 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 of 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
DRI-KLEEN COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 5103. Complaint, Dec. 17, 1943—Decision, Mar. 19, 1945*

Where two individuals engaged in the interstate sale and distribution of their "Dri-Kleen" powder, recommended for use, after addition of water thereto by the user, in the cleaning of all fabrics, including dresses, suits, drapes, hats, rugs and upholstery—

Represented through the use of the word "Dri-Kleen" in their trade name and the words "dry cleaner" in their advertising in newspapers and periodicals of national distribution, pamphlets, form letters and other advertising matter, directly and by implication, that their said product, or the solution made in accordance with the directions for its use, was a dry cleaning agent with solvents other than water, and would effectively clean and remove dirt, grease and stains from all fabrics and wearing apparel;

When in fact the product in question, or the solution made therewith, was not a dry cleaning agent as understood from the words "dry cleaning," and "dry cleaner," as well as the phonetic term "Dri-Kleen"—long used in the trade and understood by the public as referring to a method of cleaning fabrics with solvents other than water—but was a wet cleaner, being an alkaline detergent or water soluble product, which would not effectively clean and remove grease spots and many other stains from all fabrics;

With the effect of placing in the hands of dealers a means whereby they were enabled to mislead and deceive members of the purchasing public, and of misleading prospective purchasers into the erroneous belief that such representations and designations were true, and with tendency and capacity to induce the purchase of said product by reason thereof:

Held, That such acts and practices, under the circumstances set forth, were all to the prejudice of the public and constituted unfair and deceptive acts and practices in commerce.

Mr. S. F. Rose for the Commission.

Kegan & Kegan, of Chicago, Ill., for respondent.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that Walter Belinky and Samuel Barth, individuals and copartners, trading as Dri-Kleen Company, hereinafter referred to as respondents, have violated the provisions of said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondents, Walter Belinky and Samuel Barth, are individuals and copartners, trading as Dri-Kleen Company with their office and principal place of business located at 325 West Huron Street, Chicago, Ill.