

IN THE MATTER OF
ASSOCIATED MERCHANDISING CORPORATION, ET AL.

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

Docket 5027. Complaint, Aug. 17, 1943—Decision, May 8, 1945

Where a corporation, the 21 owners and members of which were engaged in the operation of 22 department stores located in Boston, New York, Philadelphia, Baltimore, Richmond, Cleveland, Chicago, Minneapolis, St. Louis, San Francisco and other large cities, with sales in 1941 aggregating 425 million dollars, and individual store sales ranging from two to 40 million dollars; which, reorganized and re-incorporated in 1939, with staffs of market specialists charged primarily with assisting the buyers of the various stores in purchasing from the manufacturers, producers and suppliers at the lowest possible price, merchandise resold in said stores of the members—about 25% of which was bought with its aid; and which, with offices in New York, branch offices in Chicago and Los Angeles, a Boston sub-office and, before the war, buying offices in various cities in Europe and the Orient; and with no warehouses and selling no merchandise to the trade or the consuming public; was maintained and operated by said members as an agency and means whereby they were enabled to act collectively to obtain special allowances and discounts on their purchases of merchandise—

- (a) Knowingly induced manufacturers, producers, and suppliers to discriminate in price in favor of said members by selling them merchandise for resale in their respective department stores at lower prices or with higher allowances or discounts than those accorded to stores of non-members in competition with members' stores; and,

Where said members—

- (b) Knowingly received the benefits of such discriminatory allowances or discounts granted to said corporation for the use and benefit of said members, through ratable distribution by said corporation of the rebate paid by the manufacturer or other source of supply on the total aggregate purchases from it for a specific period—usually a year—of all the department stores of such members; and

Where said corporation—

- (c) Sought to induce manufacturers, producers, and suppliers of merchandise resold in the department stores of the members, to grant the aforesaid special and discriminatory allowances or discounts on the purchase thereof by the members, and approved, classified, and designated a manufacturer agreeing so to do, as a "preferred resource";
- (d) As an inducement for, and in consideration of, the aforesaid discriminations in price granted by said "preferred resources," continuously requested, and by various means attempted to influence, the members to confine to said "preferred resources" all of their purchases of the merchandise of which said preferred resources were sources of supply; and

Where said members—

- (e) Usually acting directly, but sometimes through such corporation, generally confined purchases to "preferred resources" and withheld them from other sources of supply;
- (f) As a further inducement to and in consideration of the aforesaid discriminations in price, gave preference in reselling to merchandise which had been purchased

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from said "preferred resources" and did not push the resale of comparable goods which they had purchased from other sources of supply; and

Where said corporation, and its members, as above set out—

- (g) Knowingly induced and received discriminatory prices from manufacturers, producers, and suppliers by means of special allowances or discounts on their purchases in commerce of the merchandise which was resold in the stores of said members;

With the result that—

1. Manufacturers, producers, and suppliers, who had been and were in competition with such "preferred resources" in seeking to sell, in commerce, to said corporation and to the members for resale, merchandise of like grade and quality as that sold to them by said preferred resources, were prevented from thus selling their goods, due to their refusal to grant the discriminatory prices or discounts granted by said preferred resources; and

2. Department stores which were in competition with members' stores and which individually might purchase merchandise from a particular preferred resource in an amount as great as, or in excess of, that of a competing store of a member were not granted any similar price or discount on their purchases;

Effect of which discriminations in price—

1. Might be substantially to lessen competition in the line of commerce in which the preferred resources were engaged, and to injure, destroy, or prevent competition with said preferred resources in selling merchandise to said members for resale;

2. Might be substantially to lessen competition in the line of commerce in which were engaged the department stores of said members and those of their competitors who did not receive the benefit of said discriminatory prices or discounts; and

3. Might be to injure, destroy, or prevent competition between the stores of said members who received the benefits of said discriminatory price and competing department stores to whom such benefits were denied:

Held, That such acts and practices constituted violations of subsection (f) of Section 2 of the Clayton Act as amended.

Mr. Fletcher G. Cohn for the Commission.

Weil, Gotshal & Manges, of New York City, for Associated Merchandising Corp.

Gardner, Morrison & Rogers, of Washington, D. C., for the other respondents, and along with—

D'Ancona, Pflaum, Wyatt, Marwick & Riskind, of Chicago, Ill., for The Herzfeld-Phillipson Co.;

MacFarlene, Schaefer & Haun, of Los Angeles, Calif., for Bullock's, Inc.;

Kingman, Cross, Morley, Cant & Taylor, of Minneapolis, Minn., for The Dayton Co.; and

Mr. Hal H. Smith and *Mr. Albert E. Meder*, of Detroit, Mich., for The J. L. Hudson Co.

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 been and are now violating the provisions of subsection (f) of Section 2 of the Clayton Act (U.S.C. Title 15, Sec. 13), as amended by the Robinson-Patman Act, approved June 19, 1936, hereby issues its complaint, stating its charges with respect thereto as follows:

PARAGRAPH 1. Respondent, Associated Merchandising Corporation hereinafter referred to and designated as "respondent A.M.C.," is a corporation, duly organized and existing under and by virtue of the laws of the State of New York, with its office and principal place of business being located at 1440 Broadway, New York, N. Y.

Respondent, Abraham & Straus, Inc., is a corporation, duly organized and existing under and by virtue of the laws of the State of New York, with its office and principal place of business being located in the city of Brooklyn, N. Y., where it operates a retail department store under the name of Abraham & Straus, Inc.

Respondent, L. S. Ayres & Company, is a corporation, duly organized and existing under and by virtue of the laws of the State of Indiana, with its office and principal place of business being located in the city of Indianapolis, Ind., where it operates a retail department store under the name of L. S. Ayres & Company.

Respondent, Bloomingdale Bros., Inc., is a corporation, duly organized and existing under and by virtue of the laws of the State of New York, with its office and principal place of business being located at Lexington Avenue and 59th Street in the city of New York, N. Y., where it operates a retail department store under the name of Bloomingdale Bros., Inc.

Respondent, The Herzfeld-Phillipson Company, is a corporation, duly organized and existing under and by virtue of the laws of the State of Wisconsin, with its office and principal place of business being located in the city of Milwaukee, Wis., where it operates a retail department store under the name of The Boston Store.

Respondent, Bullock's, Inc., is a corporation, duly organized and existing under and by virtue of the laws of the State of Delaware, with its office and principal place of business being located in the city of Los Angeles, Calif., where it operates a retail department store under the name of Bullock's, Inc.

Respondent, Burdine's, Inc., is a corporation, duly organized and existing under and by virtue of the laws of the State of Florida, with its office and principal place of business being located in the city of Miami, Fla., where it operates a retail department store under the name of Burdine's, Inc.

Respondent, The Dayton Company, is a corporation, duly organized and existing under and by virtue of the laws of the State of Minnesota, with its office and principal place of business being located in the city of Minneapolis, Minn., where it operates a retail department store under the name of The Dayton Company.

Respondent, The Emporium-Capwell Company, is a corporation, duly organized and existing under and by virtue of the laws of the State of California, with its office and principal place of business being located in the city of San Francisco, Calif.; it operates two retail department stores, one in San Francisco, Calif., known as the Emporium, and the other in Oakland, Calif., known as The H. C. Capwell Company.

Respondent, Wm. Filene's Sons Company, is a corporation, duly organized and existing under and by virtue of the laws of the Commonwealth of Massachusetts, with its office and principal place of business being located in the city of Boston, Mass., where it operates a retail department store under the name of Wm. Filene's Sons Company.

Respondent, B. Forman Company, is a corporation, duly organized and existing under and by virtue of the laws of the State of New York, with its

office and principal place of business being located in the city of Rochester, N. Y., where it operates a retail department store under the name of B. Forman Company.

Respondent, Joseph Horne Company, is a corporation, duly organized and existing under and by virtue of the laws of the State of Pennsylvania, with its office and principal place of business being located in the city of Pittsburgh, Pa., where it operates a retail department store under the name of Joseph Horne Company.

Respondent, The J. L. Hudson Company, is a corporation, duly organized and existing under and by virtue of the laws of the State of Michigan, with its office and principal place of business being located in the city of Detroit, Mich., where it operates a retail department store under the name of The J. L. Hudson Company.

Respondent, Hutzler Brothers Co., is a corporation, duly organized and existing under and by virtue of the laws of the State of Maryland, with its office and principal place of business being located in the city of Baltimore, Md., where it operates a retail department store under the name of Hutzler Brothers Co.

Respondent, The F. & R. Lazarus & Co., is a corporation, duly organized and existing under and by virtue of the laws of the State of Ohio, with its office and principal place of business being located in the city of Columbus, Ohio, where it operates a retail department store under the name of The F. & R. Lazarus & Co.

Respondent, The Rike-Kumler Company, is a corporation, duly organized and existing under and by virtue of the laws of the State of Ohio, with its office and principal place of business being located in the city of Dayton, Ohio, where it operates a retail department store under the name of The Rike-Kumler Company.

Respondent, The John Shillito Company, is a corporation, duly organized and existing under and by virtue of the laws of the State of Ohio, with its office and principal place of business being located in the city of Cincinnati, Ohio, where it operates a retail department store under the name of The John Shillito Company.

Respondent, Stix, Baer & Fuller Company, is a corporation, duly organized and existing under and by virtue of the laws of the State of Missouri, with its office and principal place of business being located in the city of St. Louis, Mo., where it operates a retail department store under the name of Stix, Baer & Fuller Company.

Respondent, Strawbridge & Clothier, is a corporation, duly organized and existing under and by virtue of the laws of the State of Pennsylvania, with its office and principal place of business being located in the city of Philadelphia, Pa., where it operates a retail department store under the name of Strawbridge & Clothier.

Respondent, The Wm. Taylor Son & Co., is a corporation, duly organized and existing under and by virtue of the laws of the State of Ohio, with its office and principal place of business being located in the city of Cleveland, Ohio, where it operates a retail department store under the name of The Wm. Taylor Son & Co.

Respondent, Thalhimier Brothers, Inc., is a corporation, duly organized and existing under and by virtue of the laws of the State of Virginia, with its office and principal place of business being located in the city of Richmond, Va., where it operates a retail department store under the name of Thalhimier Brothers, Inc.

Respondent, R. H. White Company, is a corporation, duly organized and existing under and by virtue of the laws of the Commonwealth of Massachusetts, with its office and principal place of business being located in the city of Boston, Mass., where it operates a retail department store under the name of R. H. White Company.

PAR. 2. Respondents, Abraham & Straus, Inc., L. S. Ayres & Company, Bloomingdale Bros., Inc., The Herzfeld-Phillipson Company, Bullock's Inc., Burdine's, Inc., The Dayton Company, The Emporium-Capwell Company, Wm. Filene's Sons Company, B. Forman Company, Joseph Horne Company, The J. L. Hudson Company, Hutzler Brothers Co., The F. & R. Lazarus & Co., The Rike-Kumler Company, The John Shillito Company, Stix, Baer & Fuller Company, Strawbridge & Clothier, The Wm. Taylor Son & Company, Thalhimer Brothers, Inc., and R. H. White Company, hereinafter referred to collectively as "respondent members," own and operate the various department stores as hereinbefore set forth in paragraph 1. Each of said respondent members is a separate, distinct and independent legal entity, and each one of the department stores which they operate is independent of the stores of all of the other respondent members. The annual volume of sales of the 22 department stores owned and operated by said respondent members (respondent, The Emporium-Capwell Company, owns and operates two stores: The Emporium at San Francisco, Calif., and the H. C. Capwell Company at Oakland, Calif.) in 1941 was approximately \$425,000,000. The annual volume of sales of the respective stores of respondent members ranges from \$2,000,000 to \$40,000,000.

PAR. 3. Respondent, A.M.C., is an outgrowth of the Retail Research Association, hereinafter referred to as "R.R.A.," which was organized in 1916 by ten of the respondent members, with the avowed or ostensible purpose of enabling the department stores owned by said members to operate more efficiently and to obtain and furnish to said members information as to market conditions and other related subjects,

While the R.R.A. was in its formative stage, several of its directors saw the possibility of expanding it into an organization through which the department stores belonging to the respondent members could buy their goods, wares and merchandise collectively. Therefore, in 1918, nine of the ten respondent members who had organized R.R.A., organized respondent, A.M.C.; later the tenth of the respondent members who had organized R.R.A. acquired membership in respondent, A.M.C. By 1934, all but two of the respondent members had become affiliated with respondent, A.M.C. and these joined in 1938, when they adopted, ratified, approved and began taking part in the activities, practices and planned course of action of respondent, A.M.C. and respondent members, which are hereinafter set out. Since 1938, the 21 respondent members, operating the 22 department stores hereinbefore mentioned, have comprised the membership of respondent, A.M.C.

Respondent, A.M.C. was reorganized and reincorporated under the laws of the State of New York in 1939 with a capital stock of \$1,000,000, consisting of 10,000 shares of \$100 par value of which 250 are preferred and 9,750 common. The preferred shares, which are divided equally among all of the respondent members, have full voting power while the common shares have no voting power.

Application for membership in respondent, A.M.C., can be made only upon invitation by respondent, A.M.C., and election is only by unanimous

approval of all of the respondent members. In the event that a member desires to withdraw from respondent, A.M.C., it must sell its preferred and common stock to the remaining members of A.M.C. at a price determined by the book value of A.M.C. shares.

Although R.R.A. and respondent, A.M.C., are separate corporations, they have identical stockholders, boards of directors, executive committees and officers. They occupy jointly several floors at 1440 Broadway, New York, N. Y.; they also have branch offices in Chicago, Ill., and Los Angeles, Calif., and a suboffice in Boston, Mass. Before the war respondent, A.M.C., maintained buying offices in various cities in Europe and the Orient.

In 1938 respondent, A.M.C. and R.R.A., had 430 persons employed, which number was decreased to 325 in 1942 because of the closing of the foreign offices. The cost of operating respondent, A.M.C. and R.R.A., increased from \$25,000 per annum in 1916 to \$1,500,000 in 1941. A budget is prepared in advance to cover annual costs of operations which are borne by respondent members who contribute weighted amounts based on the volume of their previous year's sales. The estimated cost in volume of sales of each of respondent members is approximately one-third of one per cent. However, respondent, A.M.C., claims that through its method of purchasing for respondent members' stores, as hereinafter described, respondent members save from six to seven percent per year.

The principals of respondent members' stores meet twice yearly to discuss policy, but no major steps are adopted without the unanimous approval of all of the respondent members; the ultimate control and direction of respondent, A.M.C., are in the hands of the respondent members who own equal amounts of the preferred voting stock of said respondent.

PAR. 4. Respondent, A.M.C., has eight merchandising divisions, which are conducted by managers, who in turn are under the direct supervision of the director of respondent, A.M.C. Each such division has a staff of recognized market specialists in the particular field of merchandising to which that particular division's activities are directed. The primary responsibility of all of these employees of respondent, A.M.C., is to assist the merchandise buyers of the stores of respondent members in purchasing from the manufacturers, producers and suppliers of such merchandise, at the lowest possible prices, the various goods, wares and merchandise resold in said stores of the respondent members.

Respondent, A.M.C., has no warehouses and does not sell any goods, wares or merchandise to the trade or consuming public. When goods, wares and merchandise are purchased by respondent members, either directly or through or by means of respondent, A.M.C., the same are shipped to their respective stores directly from the manufacturers, producers and suppliers thereof, many of which are located in various States other than those from which such shipments are made.

Approximately 25 percent of all the goods, wares and merchandise trafficked through the stores of respondent members are bought through, by means of, or with the aid of respondent, A.M.C.

PAR. 5. In the course and conduct of their respective businesses, respondent, A.M.C., and respondent members, since June 19, 1936, have entered into and carried out, and are still carrying out, an agreed and planned course of action to secure for respondent members, from the manufacturers, producers and suppliers thereof, special allowances or discounts on their purchases of the goods, wares and merchandise, which are resold in the stores of respondent members.

PAR. 6. Pursuant to, and in furtherance of, said agreed and planned course of action, respondent, A.M.C., with the knowledge, consent and approval of respondent members, has since June 19, 1936, and is now, knowingly inducing said manufacturers, producers and suppliers to discriminate in price in favor of respondent members by selling them, for resale in their respective department stores throughout the United States, goods, wares and merchandise of like grade and quality, at lower prices, or with higher allowances or discounts, than those accorded by said manufacturers, producers and suppliers to stores not belonging to respondent members, but which are in competition with the stores of respondent members in reselling and attempting to resell such goods, wares and merchandise.

Also, pursuant to, and as a result of, the aforesaid agreed and planned course of action, respondent members have been, since June 19, 1936, and are now, knowingly receiving the benefits of said discriminations.

PAR. 7. Generally, the special allowances or discounts granted by the manufacturers or other sources of supply take the form of rebates on the purchases by respondent members for their respective stores during a specified period, which is usually a year. At the end of such a period, the seller pays this rebate to respondent, A.M.C., based on the total purchases of its goods, wares and merchandise by all of the individually owned and operated department stores of respondent members. Respondent, A.M.C., then distributes said rebate to the respective stores of respondent members, according to the amount which each said store has purchased from the particular seller during said specified period.

PAR. 8. Pursuant to, and as a part of, the aforesaid agreed and planned course of action, respondent, A.M.C., with the consent, approbation and cooperation of respondent members, has been since June 19, 1936, and is now, soliciting and requesting manufacturers, producers and suppliers of various goods, wares and merchandise which are resold in the department stores of respondent members, to grant the aforesaid special allowances or discounts on the purchases of same by respondent members. If the manufacturer, producer or supplier agrees to do this, then, and only then, is he approved, classified and designated by respondent, A.M.C., as a "preferred resource."

As an inducement for, and in consideration of, the aforesaid discriminations in price granted by said "preferred resources," respondent, A.M.C., in furtherance of the aforesaid common course of action, constantly and continuously requests, pleads with and cajoles respondent members to confine to said preferred resources, all of their purchases of the types of goods, wares and merchandise of which said preferred resources are sources of supply.

Consequently, in furtherance of the aforesaid planned common course of action, respondent members, usually acting directly, but sometimes through and by means of respondent, A.M.C., in purchasing, in the course of commerce between and among the several States of the United States, the goods, wares and merchandise to be resold in their respective department stores throughout the United States, have been since June 19, 1936, and are now, where such goods, wares and merchandise of like or similar grade and quality are manufactured, produced or supplied by both "preferred resources" and other sources of supply, generally confining such purchases to the former and withholding them from the latter.

Also, as a further inducement for, and in consideration of the aforesaid discriminations in price granted by the "preferred resources," respondent

members, in furtherance of the aforesaid planned common course of action, and with the urging and approval of respondent, A.M.C., in reselling goods, wares and merchandise in their respective stores, give preference to those which have been purchased from said preferred resources and do not "push" the resale of comparable goods, wares and merchandise which they have purchased from other sources of supply.

PAR. 9. The manufacturers, producers and suppliers who are thus classified by respondent, A.M.C. as "preferred resources" are located in various States of the United States, and, pursuant to and as part of such purchases from them by respondent members, they transport, or cause to be transported, such goods, wares and merchandise to the department stores of respondent members which are located in States other than those from which said shipments originate. In the course and conduct of their respective businesses such "preferred resources" also have sold since June 19, 1936, and are now selling and transporting and having transported in trade and commerce among the several States of the United States, to department stores other than those of respondent members, goods, wares and merchandise of like grade and quality as those which said "preferred resources" sell and transport, in the manner hereinbefore described, to the stores of respondent members.

Said "preferred resources" have maintained since June 19, 1936, and still do maintain, a regular current of trade in the goods, wares and merchandise which they manufacture, produce or supply, in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 10. There are other manufacturers, producers and suppliers of the goods, wares and merchandise, which are resold in department stores throughout the United States, who are not listed or considered as "preferred resources" by respondent, A.M.C., but who nevertheless are in competition with them, except insofar as such competition has been hindered, restricted or prevented by the acts and practices of respondents herein set forth, in seeking to sell, in trade and commerce among the several States of the United States, their goods, wares and merchandise of like grade and quality as those of said preferred resources, to the department stores of respondent members. Said manufacturers, producers and suppliers often are prevented from selling such goods, wares and merchandise to the stores of respondent members because they refuse, although requested to do so by respondent, A.M.C., to grant to said respondent members the discriminatory prices herein alleged to have been allowed by such "preferred resources" to respondent members.

PAR. 11. There are department stores not owned and operated by respondent members that purchase from said "preferred resources," in the manner and in the commerce hereinbefore described, goods, wares and merchandise of like grade and quality as those purchased by respondent members for their individual stores, and which are in competition with said stores in reselling and seeking to resell such goods, wares and merchandise. Although such competing stores individually may purchase from a particular "preferred resource" such goods, wares and merchandise in an amount as great as, or in excess of that of a competing store of a respondent member, nevertheless they are not granted by the "preferred resource" any similar price or discount on their purchases.

PAR. 12. The effect of the aforesaid discriminations in price may be substantially to lessen competition in the line of commerce in which the

"preferred resources" are engaged, and to injure, destroy or prevent competition with said "preferred resources" in selling goods, wares and merchandise of like grade and quality to respondent members for use or resale by the stores of said members within the United States.

The effect of such discriminations in price also may be substantially to lessen competition in the line of commerce in which are engaged the department stores of respondent members and those of their competitors who do not receive the benefit of the lower prices that said "preferred resources" grant to the stores of respondent members on goods, wares and merchandise of like grade and quality; likewise, the effect may be to injure, destroy or prevent competition between the stores of respondent members who receive the benefits of said discriminatory prices and their competing department stores to whom such benefits are denied.

PAR. 13. The foregoing alleged acts of the respondent, A.M.C., and the respondent members, acting pursuant to a planned and agreed common course of action and in concert and cooperation with each other, are in violation of Section 2(f) of said act of Congress approved June 19, 1936, entitled "An act to amend section 2 of the 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."

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 (Clayton Act), as amended by an Act of Congress approved June 19, 1936 (Robinson-Patman Act), and by virtue of the authority vested in the Federal Trade Commission by the aforesaid Act, the Federal Trade Commission on August 17, 1943, issued its complaint in this proceeding upon the respondents named in the caption hereof, charging them with violating the provisions of subsection (f) of Section 2 of the Clayton Act as amended by the Robinson-Patman Act. After the issuance of said complaint and the filing of respondents' answers thereto, the Commission, by order entered herein, granted respondents' motions for permission to withdraw said answers and to substitute therefor answers admitting all the material allegations of fact set forth in said complaint and waiving all intervening procedure and further hearing as to said facts, which substitute answers were duly filed in the office of the Commission. Thereafter, this proceeding regularly came on for final hearing before the Commission on the said complaint and substitute answers, and the Commission, having duly considered the matter and now being 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. Respondent, Associated Merchandising Corporation, hereinafter referred to and designated as "respondent A.M.C.," is a corporation, duly organized and existing under and by virtue of the laws of the State of New York, with its office and principal place of business being located at 1440 Broadway, New York, N. Y.

Respondent, Abraham & Straus, Inc., is a corporation, duly organized and existing under and by virtue of the laws of the State of New York,

with its office and principal place of business being located in the city of Brooklyn, N. Y., where it operates a retail department store under the name of Abraham & Straus, Inc.

Respondent, L. S. Ayres & Company, is a corporation, duly organized and existing under and by virtue of the laws of the State of Indiana, with its office and principal place of business being located in the city of Indianapolis, Ind., where it operates a retail department store under the name of L. S. Ayres & Company.

Respondent, Bloomingdale Bros., Inc., is a corporation, duly organized and existing under and by virtue of the laws of the State of New York, with its office and principal place of business being located at Lexington Avenue and 59th Street in the city of New York, N. Y., where it operates a retail department store under the name of Bloomingdale Bros., Inc.

Respondent, The Herzfeld-Phillipson Company, is a corporation, duly organized and existing under and by virtue of the laws of the State of Wisconsin, with its office and principal place of business being located in the city of Milwaukee, Wis., where it operates a retail department store under the name of The Boston Store.

Respondent, Bullock's, Inc., is a corporation, duly organized and existing under and by virtue of the laws of the State of Delaware, with its office and principal place of business being located in the city of Los Angeles, Calif., where it operates a retail department store under the name of Bullock's, Inc.

Respondent, Burdine's, Inc., is a corporation, duly organized and existing under and by virtue of the laws of the State of Florida, with its office and principal place of business being located in the city of Miami, Fla., where it operates a retail department store under the name of Burdine's, Inc.

Respondent, The Dayton Company, is a corporation, duly organized and existing under and by virtue of the laws of the State of Minnesota, with its office and principal place of business being located in the city of Minneapolis, Minn., where it operates a retail department store under the name of The Dayton Company.

Respondent, The Emporium-Capwell Company, is a corporation, duly organized and existing under and by virtue of the laws of the State of California, with its office and principal place of business being located in the city of San Francisco, Calif.; it operates two retail department stores, one in San Francisco, Calif., known as the Emporium, and the other in Oakland, Calif., known as The H. C. Capwell Company.

Respondent, Wm. Filene's Sons Company, is a corporation, duly organized and existing under and by virtue of the laws of the Commonwealth of Massachusetts, with its office and principal place of business being located in the city of Boston, Mass., where it operates a retail department store under the name of Wm. Filene's Sons Company.

Respondent, B. Forman Company, is a corporation, duly organized and existing under and by virtue of the laws of the State of New York, with its office and principal place of business being located in the city of Rochester, N. Y., where it operates a retail department store under the name of B. Forman Company.

Respondent, Joseph Horne Company, is a corporation duly organized and existing under and by virtue of the laws of the State of Pennsylvania, with its office and principal place of business being located in the city of Pittsburgh, Pennsylvania, where it operates a retail department store under the name of Joseph Horne Company.

Respondent, The J. L. Hudson Company, is a corporation duly organized and existing under and by virtue of the laws of the State of Michigan, with its office and principal place of business being located in the city of Detroit, Mich., where it operates a retail department store under the name of The J. L. Hudson Company.

Respondent, Hutzler Brothers Co., is a corporation duly organized and existing under and by virtue of the laws of the State of Maryland, with its office and principal place of business being located in the city of Baltimore, Md., where it operates a retail department store under the name of Hutzler Brothers Co.

Respondent, The F. & R. Lazarus & Co., is a corporation duly organized and existing under and by virtue of the laws of the State of Ohio, with its office and principal place of business being located in the city of Columbus, Ohio, where it operates a retail department store under the name of The F. & R. Lazarus & Co.

Respondent, The Rike-Kumler Company, is a corporation, duly organized and existing under and by virtue of the laws of the State of Ohio, with its office and principal place of business being located in the city of Dayton, Ohio, where it operates a retail department store under the name of The Rike-Kumler Company.

Respondent, The John Shillito Company, is a corporation, duly organized and existing under and by virtue of the laws of the State of Ohio, with its office and principal place of business being located in the city of Cincinnati, Ohio, where it operates a retail department store under the name of The John Shillito Company.

Respondent, Stix, Baer & Fuller Company, is a corporation, duly organized and existing under and by virtue of the laws of the State of Missouri, with its office and principal place of business being located in the city of St. Louis, Mo., where it operates a retail department store under the name of Stix, Baer & Fuller Company.

Respondent, Strawbridge & Clothier, is a corporation duly organized and existing under and by virtue of the laws of the State of Pennsylvania, with its office and principal place of business being located in the city of Philadelphia, Pa., where it operates a retail department store under the name of Strawbridge & Clothier.

Respondent, The Wm. Taylor Son & Co., is a corporation, duly organized and existing under and by virtue of the laws of the State of Ohio, with its office and principal place of business being located in the city of Cleveland, Ohio, where it operates a retail department store under the name of The Wm. Taylor Son & Co.

Respondent, Thalhimer Brothers, Inc., is a corporation, duly organized and existing under and by virtue of the laws of the State of Virginia, with its office and principal place of business being located in the city of Richmond, Va., where it operates a retail department store under the name of Thalhimer Brothers, Inc.

Respondent, R. H. White Company, is a corporation, duly organized and existing under and by virtue of the laws of the Commonwealth of Massachusetts, with its office and principal place of business being located in the city of Boston, Mass., where it operates a retail department store under the name of R. H. White Company.

PAR. 2. Respondents, Abraham & Straus, Inc., L. S. Ayres & Company, Bloomingdale Bros., Inc., The Herzfeld-Phillipson Company, Bullock's, Inc., Burdine's Inc., The Dayton Company, The Emporium-Cap-

well-Company, Wm. Filene's Sons Company, B. Forman Company, Joseph Horne Company, The J. L. Hudson Company, Hutzler Brothers Co., the F. & R. Lazarus & Co., The Rike-Kumler Company, The John Shillito Company, Stix, Baer & Fuller Company, Strawbridge & Clothier, The Wm. Taylor Son & Co., Thalhimer Brothers, Inc., and R. H. White Company, hereinafter referred to collectively as "respondent members," own and operate the various department stores as hereinbefore set forth in paragraph 1. Each of said respondent members is a separate, distinct, and independent legal entity, and each one of the department stores which they operate is independent of the stores of all of the other respondent members. The aggregate volume of sales of the 22 department stores owned and operated by said respondent members (respondent, The Emporium-Capwell Company, owns and operates two stores: The Emporium at San Francisco, Calif., and the H. C. Capwell Company at Oakland, Calif.) for the year 1941 was approximately \$425,000,000. The volume of sales for the individual stores of the respective respondent members in 1941 ranged from \$2,000,000 to \$40,000,000.

PAR. 3. Respondent, A.M.C., is an outgrowth of the Retail Research Association, hereinafter referred to as "R.R.A.," which was organized in 1916 by ten of the respondent members, with the avowed or ostensible purpose of enabling the department stores owned by said members to operate more efficiently and to obtain and furnish to said members information as to market conditions and other related subjects.

While the R.R.A. was in its formative stage, several of its directors saw the possibility of expanding it into an organization through which the department stores belonging to the respondent members could buy their goods, wares, and merchandise collectively. Therefore, in 1918, nine of the ten respondent members who had organized R.R.A., organized respondent, A.M.C.; later, the tenth of the respondent members who had organized R.R.A. acquired membership in respondent, A.M.C.

By 1934, all but two of the respondent members had become affiliated with respondent, A.M.C., and those two joined in 1938, when they adopted, ratified, approved, and began taking part in the activities and practices of respondent, A.M.C., and respondent members, which are hereinafter set out. Since 1938, the 21 respondent members, operating the 22 department stores hereinbefore mentioned, have comprised the membership of respondent A.M.C.

Respondent, A.M.C., was reorganized and reincorporated under the laws of the State of New York in 1939, with a capital stock of \$1,000,000, consisting of 10,000 shares of \$100 par value, of which 250 are preferred and 9,750 common. The preferred shares, which are divided equally among all of the respondent members, have full voting power, while the common shares have no voting power.

Application for membership in respondent, A.M.C., can be made only upon invitation by respondent, A.M.C., and election is only by unanimous approval of all of the respondent members. In the event that a member desires to withdraw from respondent, A.M.C., it must sell its preferred and common stock to the remaining members of A.M.C. at a price determined by the book value of A.M.C. shares.

Although R.R.A. and respondent, A.M.C., are separate corporations, they have identical stockholders, boards of directors, executive committees, and officers. They occupy jointly several floors at 1440 Broadway, New York, N. Y.; they also have branch offices in Chicago, Ill., and Los

Angeles, Calif., and a suboffice in Boston, Mass. Before the war respondent, A.M.C., maintained buying offices in various cities in Europe and the Orient.

In 1938 respondent, A.M.C., and R.R.A. had 430 persons employed, which number was decreased to 325 in 1942 because of the closing of the foreign offices. The cost of operating respondent, A.M.C., and R.R.A. increased from \$25,000 per annum in 1916 to \$1,500,000 in 1941. A budget is prepared in advance to cover annual costs of operations, which are borne by respondent members, who contribute weighted amounts based on the volume of their previous year's sales. The estimated cost in volume of sales of each of respondent members is approximately one-third of one percent. However, respondent, A.M.C., claims that through its method of purchasing for respondent members' stores, as hereinafter described, respondent members save from six to seven percent per year.

The principals of respondent members' stores meet twice yearly to discuss policy, but no major steps are adopted without the unanimous approval of all of the respondent members; the ultimate control and direction of respondent, A.M.C., are in the hands of the respondent members, who own equal amounts of the preferred voting stock of said respondent.

Respondent, A.M.C., was created, and is now being maintained and operated, by respondent members as an instrument, method, agency, and means whereby said respondent members are enabled to act collectively to obtain special allowances and discounts on their purchases of goods, wares, and merchandise for resale in their respective stores.

PAR. 4. Respondent, A.M.C., has eight merchandising divisions, which are conducted by managers, who in turn are under the direct supervision of the director of respondent, A.M.C. Each such division has a staff of recognized market specialists in the particular field of merchandising to which that particular division's activities are directed. The primary responsibility of all of these employees of respondent, A.M.C., is to assist the merchandise buyers of the stores of respondent members in purchasing from the manufacturers, producers, and suppliers of such merchandise, at the lowest possible prices, the various goods, wares, and merchandise resold in said stores of the respondent members.

Respondent, A.M.C., has no warehouses and does not sell any goods, wares, or merchandise to the trade or consuming public. When goods, wares, and merchandise are purchased by respondent members, either directly or through or by means of respondent, A.M.C., the same are shipped to their respective stores directly from the manufacturers, producers, and suppliers thereof, many of which are located in various States other than those from which such shipments are made.

Approximately 25 percent of all the goods, wares, and merchandise trafficked through the stores of respondent members are bought through, by means of, or with the aid of respondent, A.M.C.

PAR. 5. In the course and conduct of their respective businesses, respondent, A.M.C., and respondent members, since June 19, 1936, have knowingly induced and received discriminatory prices from manufacturers, producers, and suppliers by means of special allowances or discounts on their purchases in commerce as "commerce" is defined in the Clayton Act of the goods, wares, and merchandise which are resold in the stores of respondent members.

PAR. 6. Respondent, A.M.C., with the knowledge, consent, and approval of, and as an agency and instrument of, said respondent members,

has since June 19, 1936, and is now, knowingly inducing said manufacturers, producers, and suppliers to discriminate in price in favor of respondent members by selling them, for resale in their respective department stores throughout the United States, goods, wares, and merchandise at lower prices or with higher allowances or discounts than those accorded by said manufacturers, producers, and suppliers on their sale of goods, wares, and merchandise of like grade and quality to stores not belonging to respondent members, but which stores are in competition with the stores of respondent members in reselling and attempting to resell such goods, wares, and merchandise. Respondent members have been since June 19, 1936, and are now, knowingly receiving the benefits of said discriminations.

PAR. 7. Generally, the special and discriminatory allowances or discounts granted to respondent, A.M.C., for the use and benefit of respondent members, by the manufacturers or other sources of supply, take the form of rebates on the purchases by respondent members for their respective stores during a specified period, which is usually a year. At the end of such a period, the seller pays this rebate to respondent, A.M.C., based on the total aggregate purchases of its goods, wares, and merchandise by all of the individually owned and operated department stores of respondent members. Respondent, A.M.C., then distributes said rebate to the respective stores of respondent members, according to the amount which each said store has purchased from the particular seller during said specified period.

PAR. 8. Respondent, A.M.C., with the consent, approbation, and cooperation of respondent members, and as an instrument and agency of said respondent members, has been since June 19, 1936, and is now, soliciting, requesting, and seeking to induce manufacturers, producers, and suppliers of various goods, wares, and merchandise which are resold in the department stores of respondent members, to grant the aforesaid special and discriminatory allowances or discounts on the purchase of same by respondent members. If the manufacturer, producer, or supplier agrees to do this, then, and only then, is he approved, classified, and designated by respondent, A.M.C., as a "preferred resource."

As an inducement for, and in consideration of, the aforesaid discriminations in price granted by said preferred resources, respondent, A.M.C., constantly and continuously requests, and by various means and methods attempts to influence, respondent members to confine to said preferred resources, all of their purchases of the types of goods, wares, and merchandise of which said preferred resources are sources of supply.

Consequently, respondent members, usually acting directly, but sometimes through and by means of respondent, A.M.C., in purchasing, in the course of commerce between and among the several States of the United States, the goods, wares, and merchandise to be resold in their respective department stores throughout the United States, where such goods, wares, and merchandise of like or similar grade and quality are manufactured, produced, or supplied by both preferred resources and other sources of supply, have been since June 19, 1936, and are now, generally confining such purchases to the former and withholding them from the latter.

PAR. 9. Also, as a further inducement to, and in consideration of, the aforesaid discriminations in price granted by the preferred resources, respondent members, in reselling goods, wares, and merchandise in their respective stores throughout the United States, give preference to those which have been purchased from said preferred resources and do not

"push" the resale of comparable goods, wares, and merchandise which they have purchased from other sources of supply.

PAR. 10. The manufacturers, producers, and suppliers who are thus classified by respondent, A.M.C., as preferred resources are located in various States of the United States, and, pursuant to and as part of such purchases from them by respondent members, they transport, or cause to be transported, such goods, wares, and merchandise to the department stores of respondent members which are located in States other than those from which said shipments originate. In the course and conduct of their respective businesses such preferred resources also have sold since June 19, 1936, and are now selling and transporting and having transported in trade and commerce among the several States of the United States and in the District of Columbia, to department stores other than those of respondent members, goods, wares, and merchandise of like grade and quality as those which said preferred resources sell and transport, in the manner hereinbefore described, to the stores of respondent members.

PAR. 11. Said preferred resources have maintained since June 19, 1936, and still do maintain, a regular current of trade in the goods, wares, and merchandise which they manufacture, produce, or supply, in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 12. There are other manufacturers, producers, and suppliers who have been, and are, in competition with such preferred resources in seeking to sell, in trade and commerce, among the several States of the United States, to the respondent, A.M.C., and the respondent members for resale in the respective department stores of respondent members, goods, wares, and merchandise of like grade and quality as that sought to be sold, and sold, by said preferred resources, in such commerce, to respondent, A.M.C., or respondent members. However, these competing manufacturers, producers, and suppliers often have been, and are now, prevented from thus selling their goods, wares, and merchandise to respondent, A.M.C., or respondent members. The reason for this prevention is that they have refused to grant or allow on such sales the discriminatory and special prices or discounts allowed or granted by said preferred resources, even though respondent, A.M.C., has sought to induce such manufacturers, producers, and suppliers to grant or allow same.

PAR. 13. There are department stores not owned and operated by respondent members that purchase from said preferred resources in the manner and in the commerce hereinbefore described, goods, wares, and merchandise of like grade and quality as those purchased by respondent members for their individual stores which are in competition with said stores in reselling and seeking to resell such goods, wares, and merchandise. Although such competing stores individually may purchase, in such commerce, from a particular preferred resource such goods, wares, and merchandise in an amount as great as, or in excess of, that of a competing store of a respondent member, nevertheless they are not granted by the preferred resource any similar price or discount on their purchases.

PAR. 14. The effect of the aforesaid discriminations in price may be substantially to lessen competition in the line of commerce in which the preferred resources are engaged, and to injure, destroy, or prevent competition with said preferred resources in selling goods, wares, and merchandise of like grade and quality to respondent members for use or resale by the stores of said members within the United States.

PAR. 15. The effect of such discriminations in price also may be substantially to lessen competition in the line of commerce in which are engaged the department stores of respondent members and those of their competitors who do not receive the benefit of the lower and discriminatory prices or the higher and discriminatory discounts which said preferred resources grant or allow to respondent members on goods, wares, and merchandise of like grade and quality; likewise, the effect may be to injure, destroy, or prevent competition between the stores of respondent members who receive the benefits of said discriminatory prices and competing department stores to whom such benefits are denied.

CONCLUSION

The aforesaid acts and practices of respondents constitute violations of subsection (f) of Section 2 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 act of Congress approved June 19, 1936 (The Robinson-Patman Act).

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the answers of the respondents, in which answers respondents admit all the material allegations of fact set forth in said complaint and state that they waive all intervening procedure and further hearing as to said facts; and the Commission having made its findings as to the facts and its conclusion that said respondents have violated the provisions of subsection (f) of Section 2 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 (Clayton Act), as amended by Act approved June 19, 1936 (Robinson-Patman Act).

It is ordered, That the respondents, Associated Merchandising Corporation, a corporation; Abraham & Straus, Inc., a corporation; L. S. Ayres & Company, a corporation; Bloomingdale Bros., Inc., a corporation; The Herzfeld-Phillipson Company, a corporation; Bullock's, Inc., a corporation; Burdine's, Inc., a corporation; The Dayton Company, a corporation; The Emporium-Capwell Company, a corporation; Wm. Filene's Sons Company, a corporation; B. Forman Company, a corporation; Joseph Horne Company, a corporation; The J. L. Hudson Company, a corporation; Hutzler Brothers Co., a corporation; The F. R. Lazarus & Co., a corporation; The Rike-Kumler Company, a corporation; The John Shillito Company, a corporation; Stix, Baer & Fuller Company, a corporation; Strawbridge & Clothier, a corporation; The Wm. Taylor Son & Co., a corporation; Thalhimier Brothers, Inc., a corporation; and R. H. White Company, a corporation, and their respective officers, representatives, agents, and employees, jointly or severally, directly or through any corporate or other device in or in connection with the purchase of goods, wares, and merchandise in commerce as "commerce" is defined in the aforesaid Clayton Act as amended, do forthwith cease and desist from:

1. Knowingly inducing or receiving any discrimination in price through or by means of discounts, rebates, or other allowances on purchases from any manufacturer or seller greater than the discounts or other allowances

currently allowed by such manufacturer or seller to competitors of respondents, or any of them, for merchandise of like grade and quality.

2. Knowingly inducing or receiving any discrimination in price from any manufacturer or seller by means of discounts, rebates, or other allowances based upon the total purchases of the respondents as a group, by or through respondent, Associated Merchandising Corporation, or by any other means, which are not currently allowed by such manufacturer or seller to the individual competitors of respondents, or any of them.

3. Knowingly purchasing from any manufacturer or seller at prices lower than the prices currently charged by such manufacturer or seller to competitors of respondents, or any of them, for merchandise of like grade and quality.

4. Using collective action, in connection with the purchase of merchandise, for the purpose and with the result of inducing any manufacturer or seller to allow any discount, rebate, or other allowance higher than, or price lower than, that allowed by such manufacturer or seller to competitors of the respondents, or any of them, when such allowance results in the receiving of a discrimination in price by the respondents, or any of them.

5. Inducing any manufacturer or seller, by or through any of the following means or methods, to allow any discount, rebate, or other allowance higher than, or price lower than, that allowed by such manufacturer or seller to competitors of respondents, or any of them, when such allowance results in the securing of a discrimination in price by the respondents, or any of them:

a. By employing or utilizing respondent, Associated Merchandising Corporation, or any other medium or central agency as an instrument or vehicle or aid in inducing manufacturers or sellers to allow such higher discounts, rebates, or other allowances or lower prices.

b. By giving preference, either directly or through the respondent, Associated Merchandising Corporation, or any other agency, to those manufacturers or sellers who grant such discriminatory prices.

c. By refusing directly or through the respondent, Associated Merchandising Corporation, or any other agency to purchase merchandise from those manufacturers or sellers who refuse to grant or who refrain from granting such discriminatory prices.

d. By offering or agreeing to give or giving preference in the resale in the respective department stores of the respondents to the merchandise of those manufacturers or sellers who grant such discriminatory prices.

e. By utilizing or employing a preferred group of manufacturers or sellers or preferred resources, classification in which is dependent upon such manufacturers' or sellers' agreeing to allow discriminations in price to the respondents and refusing to buy from manufacturers and sellers who do not allow such discriminatory prices.

6. Knowingly receiving any discriminations in price or the benefits thereof, either directly or indirectly, by or through any of the means or methods prohibited by this order.

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
GILJAN MEDICINE COMPANY, INC. ET AL.

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

Docket 5216. Complaint, Sept. 14, 1944—Decision, May 10, 1945

Where a corporation and its three officers, engaged in the interstate sale and distribution of a medicinal preparation called "Giljan" and sometimes "Giljan Laxative Compound," together with their advertising agent;

In advertising said preparation in newspapers, reprints thereof, radio broadcasts, leaflets, charts, diagrams and other printed matter and by advertising mats and radio scripts furnished retail drug stores—cost of which they paid in whole or in part—and by oral statements of their officers and agents who called upon wholesalers and druggists and assisted in the sale of said preparations, and which included such statements as "DON'T PAY OVER 25¢ for GILJAN MEDICINE Today, Friday, Saturday CROWDS THROUG CUNNINGHAM'S DRUG STORE TO BUY 25¢ MEDICINE" and "George Remus, the dynamic Giljan 'Miracle Man' will be at Cunningham's in person to explain how this amazing 'natural medicine' works its wonders," along with a picture of said individual and "This offer is made because Cunningham's Drug Store believes it is only fair that everyone who suffers should have a chance to try a medicine at this low cost in order to see if it will help them, before they pay the full size price for it"; and purported testimonial quotations accompanied by depictions of the individual and diagrams, as asserted, of an afflicted liver, stomach, or kidney—

Represented through statements and depictions therein that said preparation was a natural medicine which was made from a new scientific formula and contained 18 ingredients, all of which were of substantial aid in bringing health to the user; constituted a cure or competent treatment for stomach trouble in its various forms, constipation, weak kidneys, rheumatism and neuritis and the pains associated therewith, backaches, night risings, sallowness due to a sluggish liver, gas pains, sour stomach, bloating, belching, stomach, liver and kidney ailments in general, and a general run-down condition; aided in the proper functioning of the kidneys and liver; was effective in relieving headaches, dizziness, a lazy, drowsy, tired feeling, or lack of energy, and was an effective diuretic; made the stomach, liver and kidneys more active and flushed poisons from the kidneys; cleared old bile out of the system; was effective in relieving bladder irritations; strengthened the nerves, and improved the appetite and digestion, relieved digestive disorders and regulated the bowels; and that use thereof made one healthy, feel years younger and brought relief to 87 percent of those who had used it;

The facts being that it was not a natural medicine either in the sense that its ingredients were entirely of natural origin or that it acted in a natural manner upon the system; the formula thereof was neither new nor scientific; with the exception of cascara bark, senna leaves, aloes and mandrake root, the ingredients in said preparation were not in sufficient amounts to have any therapeutic value; it had no value in the treatment of headaches, dizziness or a tired feeling in excess of affording temporary relief when such conditions were caused by constipation; its value in the treatment of constipation was limited to affording temporary relief by reason of its laxative qualities; it was not an effective diuretic; and in other respects it would not accomplish the results claimed since in truth and in fact it was only a laxative with no therapeutic value except as such;