

IN THE MATTER OF
GEVERTZ BUYING CORPORATION ET AL.

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 5501. Complaint, June 11, 1947—Decision, Feb. 4, 1948

Resident commission buyers may be defined as representatives or agents of purchasers, who are permanently in the market negotiating purchases from competitive sellers, in the interest of such purchasers, but who receive their remuneration, customarily designated as commissions, from the sellers.

Where (1) a corporation, which was engaged as a resident commission buyer in purchasing for firms in which neither it nor any other associated with it as hereinbelow set out, had any financial interest, and also for various retail firms and others as below described, men's wearing apparel and other merchandise from manufacturers and jobbers, who paid it commissions or brokerage fees on such purchases, usually amounting to about 5 percent of the net purchase price; (2) two individuals, officers, and principal stockholders of said corporation, who exercised a substantial degree of authority and control over its business, who were engaged also under the trade name "Charles R. Gevertz Stores" in conducting a jobbing business and buying merchandise for and selling same to the retail firms known as the "Charles R. Gevertz Stores," in which they had a substantial financial interest, as well as to other firms in which they had no financial interest, and who purchased the merchandise above referred to through aforesaid corporation; and (3) two partners who engaged, through aforesaid corporation and under the trade name "Pacific Exporting Co.," in buying merchandise for and selling it to a number of firms in various sections of the United States and in the Territory of Hawaii, including a number of retail concerns in which they had a substantial financial interest and others in which they had no such interest, and in purchasing merchandise for their own account also as jobbers; and who, with branch office at San Francisco, operated from offices in New York, which were jointly made use of by them and by aforesaid corporation and individuals, and expenses of which were paid from the receipt and acceptance of the commissions or brokerage fees paid said corporation by said sellers, and in which they all participated;

Received and accepted, on orders placed with and purchases of merchandise made from numerous manufacturers and jobbers in the several states and territories as aforesaid noted, commissions or brokerage fees, consisting of a certain percentage of the sales price agreed upon by each of the sellers, and said corporation and individuals, on such orders for merchandise, placed by them for their own account and for the account of their principals; namely, the buyers in whose behalf they had been and were in fact acting:

Held, That said corporation and individuals, in receiving and accepting brokerage fees or commissions, and allowances or discounts in lieu thereof, from manufacturers and sellers upon purchases of merchandise as hereinabove

Complaint

set out, violated the provisions of subsection (c) of section 2 of the Clayton Act as amended by the Robinson-Patman Act.

Before *Mr. Earl J. Kolb*, trial examiner.

Mr. Edward S. Ragsdale for the Commission.

Cohen & Wedeen, 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 violating the provisions of subsection (c) 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, Gevertz Buying Corp., is a corporation organized, existing, and doing business under the laws of the State of New York, with its principal office and place of business located at 170 Fifth Avenue, New York, N. Y. The respondent since June 19, 1936, has engaged, and is now engaged, in the business of buying of men's wearing apparel and other merchandise (all of which is hereinafter called merchandise) as agent for and in behalf of a number of corporations, partnerships, individuals, and others, located in various sections of the United States and in the Territory of Hawaii, who are engaged in the wholesaling or retailing of such merchandise.

Respondent, Gevertz Buying Corp., purchases merchandise for and in behalf of a number of business firms located in various sections of the United States, and in the Territory of Hawaii, in which firms none of the respondents named in the complaint herein have any financial interest, and respondent corporation also purchases merchandise for several firms located in various sections of the United States, which are known as the Charles R. Gevertz Stores, which firms respondents Charles R. Gevertz and Madeline Gevertz own outright, or in which they have a substantial financial interest.

The respondent corporation, in addition, purchases merchandise for several firms located in various sections of the United States, and in the Territory of Hawaii, which firms respondents Clifford Spitzer and Violet Prager Spitzer own outright, or in which they have a substantial financial interest. Such merchandise is generally, but not always, purchased in the name of Pacific Exporting Co.

The respondent, Gevertz Buying Corp., is engaged in a business which is known to the trade as that of Resident Commission Buyers.

Complaint

44 F. T. C.

Resident Commission Buyers may be defined as representatives or agents of purchasers, who are permanently in the market negotiating purchases from competitive sellers, in the exclusive interest of such purchasers, but who receive their remuneration, customarily designated as commissions, from the sellers.

The respondent, Gevertz Buying Corp., purchases merchandise as aforesaid, from manufacturers and jobbers, who pay said respondent commissions or brokerage fees on such purchases. Such commissions or brokerage fees usually amount to approximately 5 percent of the net purchase price of the merchandise so purchased from the respective sellers.

PAR. 2. Respondent, Madeline Gevertz, is an individual residing in the State of New York, with her office and principal place of business located at 170 Fifth Avenue, New York, N. Y., and is one of the principal stockholders in the Gevertz Buying Corp., and is now president and secretary of said corporation, and has been an officer of the corporation since some time after June 19, 1936. After becoming an officer, and at the present time, and for some time past as president and secretary, respondent, Madeline Gevertz, has exercised, and still exercises, a substantial degree of authority and control over the business conducted by said corporation, including, together with her brother, respondent Charles R. Gevertz, the direction of its buying policies.

The respondent, Madeline Gevertz, together with her brother, respondent Charles R. Gevertz, is also engaged in business under the trade name and style of Charles R. Gevertz Stores, which said trade name is utilized by respondent, Madeline Gevertz, and her brother, respondent Charles R. Gevertz, in conducting a jobbing business, and in directly or indirectly buying merchandise for and selling merchandise to the several retail firms known to the trade and generally as the Charles R. Gevertz Stores, and to other firms in which respondent has no financial interest. Such merchandise is purchased through respondent Gevertz Buying Corp.

PAR. 3. Respondent, Charles R. Gevertz, is an individual residing in the State of New York, with his principal office and place of business located at 170 Fifth Avenue, New York, N. Y. The respondent is vice president and treasurer of Gevertz Buying Corp. and has been an officer and one of the principal stockholders in said corporation since some time after June 19, 1936. This respondent, after becoming an officer, and at the present time, and for some time past as vice president and treasurer, exercised, and still exercises, a substantial degree of authority and control over the business conducted by said corporation, and, together with his sister, respondent Madeline Gevertz, controls the

direction of the corporation's buying policies. The respondent, Charles R. Gevertz, together with his sister, respondent Madeline Gevertz, is also engaged in business under the trade name and style of Charles R. Gevertz Stores, which said trade name is utilized by respondent, Charles R. Gevertz and his sister, respondent Madeline Gevertz, in conducting a jobbing business, and in directly or indirectly buying merchandise for and selling merchandise to the several retail firms known to the trade and generally as the Charles R. Gevertz Stores, and to other firms in which respondent has no financial interest. Such merchandise is purchased through respondent Gevertz Buying Corp.

PAR. 4. The respondents, Madeline Gevertz and Charles R. Gevertz, since June 19, 1936, have owned outright, or have had, or now have, directly or indirectly, a substantial financial interest in, a number of retail firms which are generally known as the Charles R. Gevertz Stores. Representative of said firms are: Linxwiler's, Sherman, Tex.; Fournette's Men's Wear, Port Arthur, Tex.; Linxwiler's, Denison, Tex.; Guarantee Sport Shop, Dallas, Tex.; Forest Ford, Inc., Fort Worth, Tex.

The respondents, Madeline Gevertz and Charles R. Gevertz, purchase merchandise for said firms, and for other firms which they own or in which they have a substantial financial interest, and for firms in which respondents have no financial interest, under the trade name of Charles Gevertz Stores, or otherwise, through the Gevertz Buying Corp.

PAR. 5. Respondent, Clifford Spitzer, is an individual residing in the State of New York, with his office and principal place of business located at 170 Fifth Avenue, New York, N. Y., and having a branch office located at 420 Market Street, San Francisco, Calif. Respondent, Clifford Spitzer, and his wife, respondent Violet Prager Spitzer, are co-partners engaged in the business of buying and selling merchandise under the trade name and style of Pacific Exporting Co.

Respondent herein, at the present time and for some time past, as co-partner, has exercised, and still exercises, a substantial degree of authority and control over the business conducted by said partnership, including the direction of its buying policies.

The respondent, Clifford Spitzer, purchases, directly or indirectly, merchandise for a number of firms located in various sections of the United States and in the Territory of Hawaii through respondent Gevertz Buying Corp.

PAR. 6. Respondent, Violet Prager Spitzer, is an individual residing in the State of New York, with her office and principal place of business

located at 170 Fifth Avenue, New York, N. Y., and having a branch office located at 420 Market Street, San Francisco, Calif.

Respondent, Violet Prager Spitzer, and her husband, respondent Clifford Spitzer, are copartners engaged in the business of buying and selling merchandise under the trade name and style of Pacific Exporting Co.

Respondent herein, at the present time and for some time past, as copartner, has exercised, and still exercises, a substantial degree of authority and control over the business conducted by said partnership, including the direction of its buying policies.

The respondent, Violet Prager Spitzer, purchases, directly or indirectly, merchandise for a number of firms located in various sections of the United States and in the Territory of Hawaii through respondent Gevertz Buying Corp.

PAR. 7. The respondents, Clifford Spitzer and Violet Prager Spitzer, since June 19, 1936, have owned outright, or have had, and now have, a substantial financial interest in a number of retail firms located in the several States of the United States and the Territory of Hawaii.

Representative of said firms is: The Hub Clothing House, Ltd., Honolulu, T. H.

The respondents, Clifford Spitzer and Violet Prager Spitzer, purchase merchandise for said firm and for other firms which they own or in which they have a substantial financial interest, and for firms in which said respondents have no financial interest.

The respondents, Clifford Spitzer and Violet Prager Spitzer, also purchase merchandise for their own account as jobbers. All such business transactions set out herein are conducted by respondents under their trade name of Pacific Exporting Co., which operates principally as a buying unit for The Hub Clothing House, Ltd., of Honolulu, T. H. The respondents make substantial purchases of merchandise in commerce in the name of the Pacific Exporting Co., and otherwise, through the Gevertz Buying Corp.

PAR. 8. The individual respondents, since June 19, 1936, together with the respective businesses they conduct, either individually, as a corporation, partnership, or under a trade name, or otherwise, as: Madeline Gevertz, Charles R. Gevertz, Charles R. Gevertz Stores, Gevertz Buying Corp., Clifford Spitzer, Violet Prager Spitzer, and Pacific Exporting Co., operate from joint offices located at 170 Fifth Avenue, New York, N. Y., in which the expenses of conducting said offices are shared and are paid from the proceeds of the commissions or brokerage fees granted and allowed Gevertz Buying Corp. by the sellers of the merchandise purchased through said corporation or

otherwise, directly or indirectly by the respective respondents, or others. Each of said respondents otherwise participate, directly or indirectly, in the receipt and acceptance of commissions or brokerage fees paid Gevertz Buying Corp. by said sellers.

PAR. 9. In the course and conduct of its said business respondent, Gevertz Buying Corp., since June 19, 1936, has placed orders and purchased merchandise from numerous manufacturers and jobbers located in the several States and Territories of the United States other than the States or Territories where the buyers are located. Respondent corporation, as aforesaid, is now, and has been since June 19, 1936 engaged in the business of purchasing merchandise, and the said individual respondents, through said corporate respondent, have likewise been engaged in said business. The said manufacturers and jobbers from whom respondent corporation purchases merchandise as aforesaid, pursuant to respondent's instructions, ship and deliver such merchandise to the respective buyers located in various States and Territories of the United States. In some instances said manufacturers and jobbers, to permit inspection or repacking of the merchandise, ship it to respondent's place of business (at 170 Fifth Avenue, New York City, or elsewhere), where it is thereafter inspected, repacked, and shipped to the respective buyers located in the various States and Territories of the United States. And there has been, since June 19, 1936, a constant current of trade and commerce conducted by said respondent in such merchandise between and among the various States and Territories of the United States.

PAR. 10. In the course and conduct of the said purchasing transactions by respondents, Gevertz Buying Corp., a corporation, Madeline Gevertz, individually and as president and secretary of Gevertz Buying Corp., and also doing business under the trade name of Charles R. Gevertz Stores; Charles R. Gevertz, individually and as vice president and treasurer of Gevertz Buying Corp., and also doing business under the trade name of Charles R. Gevertz Stores, or otherwise; Clifford Spitzer, individually, and Violet Prager Spitzer, individually, and both as copartners, doing business under the trade name and style of Pacific Exporting Co., as set forth herein, manufacturers and jobbers in connection with transactions in commerce have, since June 19, 1936, transmitted, paid, and delivered, and do transmit, pay, and deliver, directly or indirectly, to said respondents commissions or brokerage fees, the same being a certain percentage of the sales price agreed upon between each of such sellers and the said respondents on the orders for merchandise placed by the respondents in their own behalf and for their own account and for their principals, and in

connection with transactions in commerce each of said respondents, since June 19, 1936, has directly or indirectly received and accepted, and is receiving and accepting, such commissions or brokerage fees on purchases of merchandise made for their own account, and for their principals' account, namely, the buyers in whose behalf said respondents have been and are in fact acting.

PAR. 11. The foregoing acts and practices are in violation of subsection (c) of section 2 of the Clayton Act as amended.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an act of Congress entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914 (the Clayton Act), as amended by an act of Congress approved June 19, 1936 (Robinson-Patman Act), and by virtue of the authority vested in the Federal Trade Commission by the aforesaid act, the Federal Trade Commission on June 11, 1947, issued and subsequently served its complaint in this proceeding upon the respondents, Gevertz Buying Corp., a corporation, Madeline Gevertz, individually and as president and secretary of Gevertz Buying Corp., and also doing business under the trade name of Charles R. Gevertz Stores, Charles R. Gevertz, individually and as vice president and treasurer of Gevertz Buying Corp., and also doing business under the trade name of Charles R. Gevertz Stores, Clifford Spitzer, and Violet Prager Spitzer, individually and as copartners trading under the name of Pacific Exporting Co., charging them with the violation of subsection (c) 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' answer thereto, respondents, on motion, withdrew said answer and filed a substitute answer admitting all the material allegations of fact set forth in said complaint and waiving intervening procedure and further hearing as to said facts. Thereafter this proceeding regularly came on for final hearing before the Commission upon the said complaint and substitute answer filed by the respondents; and the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Gevertz Buying Corp., is a corporation organized, existing, and doing business under the laws of the State

of New York, with its principal office and place of business located at 170 Fifth Avenue, New York, N. Y. The respondent, since June 19, 1936, has engaged, and is now engaged, in the business of buying of men's wearing apparel and other merchandise (all of which is hereinafter called "merchandise") as agent for and in behalf of a number of corporations, partnerships, individuals, and others, located in various sections of the United States and in the Territory of Hawaii, who are engaged in the wholesaling or retailing of such merchandise.

Respondent, Gevertz Buying Corp., purchases merchandise for and in behalf of a number of business firms located in various sections of the United States, and in the Territory of Hawaii, in which firms none of the respondents named in the complaint have any financial interest; and respondent corporation also purchases merchandise for several firms located in various sections of the United States, which are known as the Charles R. Gevertz Stores, which firms respondents Charles R. Gevertz and Madeline Gevertz own outright, or in which they have a substantial financial interest.

The respondent corporation, in addition, purchases merchandise for several firms located in various sections of the United States, and in the Territory of Hawaii, which firms respondents Clifford Spitzer and Violet Prager Spitzer own outright, or in which they have a substantial financial interest. Such merchandise is generally, but not always, purchased in the name of Pacific Exporting Co.

The respondent, Gevertz Buying Corp., is engaged in a business which is known to the trade as that of Resident Commission Buyers. Resident Commission Buyers may be defined as representatives or agents of purchasers, who are permanently in the market negotiating purchases from competitive sellers, in the exclusive interest of such purchasers, but who receive their remuneration, customarily designated as commissions, from the sellers.

The respondent, Gevertz Buying Corp., purchases merchandise as aforesaid, from manufacturers and jobbers, who pay said respondent commissions or brokerage fees on such purchases. Such commissions or brokerage fees usually amount to approximately five percent of the net purchase price of the merchandise so purchased from the respective sellers.

PAR. 2. Respondent, Madeline Gevertz, is an individual residing in the State of New York, with her office and principal place of business located at 170 Fifth Avenue, New York, N. Y., and is one of the principal stockholders in the Gevertz Buying Corp., and is now president and secretary of said corporation, and has been an officer of the corporation since some time after June 19, 1936. After becoming an

officer, and at the present time, and for some time past as president and secretary, respondent, Madeline Gevertz, has exercised, and still exercises, a substantial degree of authority and control over the business conducted by said corporation, including, together with her brother, respondent Charles R. Gevertz, the direction of its buying policies.

The respondent, Madeline Gevertz, together with her brother, respondent Charles R. Gevertz, is also engaged in business under the trade name and style of Charles R. Gevertz Stores, which said trade name is utilized by respondent Madeline Gevertz and her brother, respondent Charles R. Gevertz, in conducting a jobbing business, and in directly or indirectly buying merchandise for and selling merchandise to the several retail firms known to the trade and generally as the Charles R. Gevertz Stores, and to other firms in which respondent has no financial interest. Such merchandise is purchased through respondent Gevertz Buying Corp.

PAR. 3. Respondent, Charles R. Gevertz, is an individual residing in the State of New York, with his principal office and place of business located at 170 Fifth Avenue, New York, N. Y. The respondent is vice president and treasurer of Gevertz Buying Corp. and has been an officer and one of the principal stockholders in said corporation since some time after June 19, 1936. This respondent, after becoming an officer, and at the present time, and for some time past as vice president and treasurer, exercised, and still exercises, a substantial degree of authority and control over the business conducted by said corporation, and, together with his sister, respondent Madeline Gevertz, controls the direction of the corporation's buying policies. The respondent, Charles R. Gevertz, together with his sister, respondent Madeline Gevertz, is also engaged in business under the trade name and style of Charles R. Gevertz Stores, which said trade name is utilized by respondent, Charles R. Gevertz and his sister, respondent Madeline Gevertz, in conducting a jobbing business, and in directly or indirectly buying merchandise for and selling merchandise to the several retail firms known to the trade and generally as the Charles R. Gevertz Stores, and to other firms in which respondent has no financial interest. Such merchandise is purchased through respondent Gevertz Buying Corp.

PAR. 4. The respondents, Madeline Gevertz and Charles R. Gevertz, since June 19, 1936, have owned outright, or have had, or now have, directly or indirectly, a substantial financial interest in, a number of retail firms which are generally known as the Charles R. Gevertz

Stores. Representative of said firms are: Linxwiler's, Sherman, Tex.; Fournette's Men's Wear, Port Arthur, Tex.; Linxwiler's, Denison, Tex.; Guarantee Sport Shop, Dallas, Tex.; Forest Ford, Inc., Fort Worth, Tex.

The respondents, Madeline Gevertz and Charles R. Gevertz, purchase merchandise for said firms, and for other firms which they own or in which they have a substantial financial interest, and for firms in which respondents have no financial interest, under the trade name of Charles Gevertz Stores, or otherwise, through the Gevertz Buying Corp.

PAR. 5. Respondent, Clifford Spitzer, is an individual residing in the State of New York, with his office and principal place of business located at 170 Fifth Avenue, New York, N. Y., and having a branch office located at 420 Market Street, San Francisco, Calif. Respondent, Clifford Spitzer, and his wife, respondent Violet Prager Spitzer, are copartners engaged in the business of buying and selling merchandise under the trade name and style of Pacific Exporting Co.

Respondent herein, at the present time and for some time past, as copartner, has exercised, and still exercises, a substantial degree of authority and control over the business conducted by said partnership, including the direction of its buying policies.

The respondent, Clifford Spitzer, purchases, directly or indirectly, merchandise for a number of firms located in various sections of the United States and in the Territory of Hawaii through respondent Gevertz Buying Corp.

PAR. 6. Respondent, Violet Prager Spitzer, is an individual residing in the State of New York, with her office and principal place of business located at 170 Fifth Avenue, New York, N. Y., and having a branch office located at 420 Market Street, San Francisco, Calif.

Respondent, Violet Prager Spitzer, and her husband, respondent Clifford Spitzer, are copartners engaged in the business of buying and selling merchandise under the trade name and style of Pacific Exporting Co.

Respondent herein, at the present time and for some time past, as copartner, has exercised, and still exercises, a substantial degree of authority and control over the business conducted by said partnership, including the direction of its buying policies.

The respondent, Violet Prager Spitzer, purchases, directly or indirectly, merchandise for a number of firms located in various sections of the United States and in the Territory of Hawaii through respondent Gevertz Buying Corp.

PAR. 7. The respondents, Clifford Spitzer and Violet Prager Spitzer, since June 19, 1936, have owned outright, or have had and now have, a substantial financial interest in a number of retail firms located in the several States of the United States and the Territory of Hawaii.

Representative of said firms is: The Hub Clothing House, Ltd., Honolulu, T. H.

The respondents, Clifford Spitzer and Violet Prager Spitzer, purchase merchandise for said firm and for other firms which they own or in which they have a substantial financial interest, and for firms in which said respondents have no financial interest.

The respondents, Clifford Spitzer and Violet Prager Spitzer, also purchase merchandise for their own account as jobbers. All such business transactions set out herein are conducted by respondents under their trade name of Pacific Exporting Co., which operates principally as a buying unit for The Hub Clothing House, Ltd., of Honolulu, T. H. The respondents make substantial purchases of merchandise in commerce in the name of the Pacific Exporting Co., and otherwise, through the Gevertz Buying Corp.

PAR. 8. The individual respondents, since June 19, 1936, together with the respective businesses they conduct, either individually, as a corporation, partnership, or under a trade name, or otherwise, as: Madeline Gevertz, Charles R. Gevertz, Charles R. Gevertz Stores, Gevertz Buying Corp., Clifford Spitzer, Violet Prager Spitzer, and Pacific Exporting Co., operate from joint offices located at 170 Fifth Avenue, New York, N. Y., in which the expenses of conducting said offices are shared and are paid from the proceeds of the commissions or brokerage fees granted and allowed Gevertz Buying Corp. by the sellers of the merchandise purchased through said corporation or otherwise, directly or indirectly by the respective respondents, or others. Each of said respondents otherwise participate, directly or indirectly, in the receipt and acceptance of commissions or brokerage fees paid Gevertz Buying Corp. by said sellers.

PAR. 9. In the course and conduct of its said business, respondent, Gevertz Buying Corp., since June 19, 1936, has placed orders and purchased merchandise from numerous manufacturers and jobbers located in the several States and Territories of the United States other than the States or Territories where the buyers are located. Respondent corporation, as aforesaid, is now, and has been since June 19, 1936, engaged in the business of purchasing merchandise, and the said individual respondents, through said corporate respondent, have likewise been engaged in said business. The said manufacturers and jobbers from whom respondent corporation purchases merchandise as afore-

said, pursuant to respondent's instructions, ship and deliver such merchandise to the respective buyers located in various States and Territories of the United States. In some instances said manufacturers and jobbers, to permit inspection or repacking of the merchandise, ship it to respondent's place of business (at 170 Fifth Avenue, New York City, or elsewhere), where it is thereafter inspected, repacked, and shipped to the respective buyers located in the various States and territories of the United States. And there has been, since June 19, 1936, a constant current of trade and commerce conducted by said respondent in such merchandise between and among the various States and Territories of the United States.

PAR. 10. In the course and conduct of the said purchasing transactions by respondents, Gevertz Buying Corp., a corporation, Madeline Gevertz, individually and as president and secretary of Gevertz Buying Corp., and also doing business under the trade name of Charles R. Gevertz Stores; Charles R. Gevertz, individually and as vice president and treasurer of Gevertz Buying Corp., and also doing business under the trade name of Charles R. Gevertz Stores, or otherwise; Clifford Spitzer, individually, and Violet Prager Spitzer, individually, and both as copartners, doing business under the trade name and style of Pacific Exporting Co., as set forth herein, manufacturers and jobbers in connection with transactions in commerce have, since June 19, 1936, transmitted, paid, and delivered and do transmit, pay, and deliver, directly or indirectly, to said respondents commissions or brokerage fees, the same being a certain percentage of the sales price agreed upon between each of such sellers and the said respondents on the orders for merchandise placed by the respondents in their own behalf and for their own account and for their principals, and in connection with transactions in commerce each of said respondents, since June 19, 1936, has directly or indirectly received and accepted, and is receiving and accepting, such commissions or brokerage fees on purchases of merchandise made for their own account, and for their principals' account, namely, the buyers in whose behalf said respondents have been and are in fact acting.

CONCLUSION

In receiving and accepting brokerage fees or commissions, and allowances or discounts in lieu thereof, from manufacturers and sellers upon purchases of merchandise in the manner and under the circumstances as hereinabove found, respondents have violated the provisions of subsection (c) of section 2 of the Clayton Act as amended.

Order

44 F. T. C.

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 the respondents, in which answer respondents admit all the material allegations of fact set forth in said complaint and waive all intervening procedure and further hearings 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 (c) of section 2 of the 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 (Robinson-Patman Act) :

It is ordered, That the respondents, Gevertz Buying Corp., a corporation, and its officers, Madeline Gevertz, individually and as president and secretary of Gevertz Buying Corp. and doing business under the trade name of Charles R. Gevertz Stores, Charles R. Gevertz, individually and as vice president and treasurer of Gevertz Buying Corp. and also doing business under the trade name of Charles R. Gevertz Stores, Clifford Spitzer, and Violet Prager Spitzer, individually and as copartners trading as Pacific Exporting Co., and their respective representatives, agents, and employees, directly or through any corporate or other device in connection with the purchase of men's wearing apparel and other merchandise in commerce as "commerce" is defined in the aforesaid Clayton Act, do forthwith cease and desist from :

1. Receiving or accepting, directly or indirectly, anything of value as a commission, brokerage, or other compensation, or any allowance or discount in lieu thereof, from any manufacturer or seller on or in connection with purchases made from such manufacturer or 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.

Order

IN THE MATTER OF

THE PARKER PEN CO.

MODIFIED CEASE AND DESIST ORDER

Docket 4338. Order, Feb. 9, 1948

Order, in accordance with decree below referred to, in proceeding in question in which original order issued on May 3, 1945, 40 F. T. C. 547, and in which the Circuit Court of Appeals for the Seventh Circuit, on December 17, 1946, in *The Parker Pen Co. v. Federal Trade Commission*, 159 F. (2d) 509, 43 F. T. C. 1190, rendered its opinion, and on June 6, 1947, issued its final decree modifying said cease and desist order—

Requiring respondent, its officers, etc., in connection with the offer, etc., of its fountain pens in commerce, to cease and desist from—

- (1) Using the words "Guaranteed for Life," etc., to designate, describe, or refer to its pens, or otherwise representing that such pens are unconditionally guaranteed for life, unless it does in fact make, without expense to the owner, any repairs or replacements which may be necessitated during the life of the owner by any cause other than willful damage or abuse;
- (2) Representing, etc., that its pens are unconditionally guaranteed for any designated period of time, subject to similar qualifications;
- (3) Representing that its pens contain fourteen less parts than other self-filling fountain pens, etc.;
- (4) Representing that the points on its pens are scratch-proof; or, as amended, as above set out,
- (5) Representing that its pens are guaranteed for life, or other designated period of time, where a charge is imposed by respondent for servicing said pens or for parts, unless the terms of limitation of the guarantee as imposed by respondent from time to time, including the amount of any charge that may be made, are placed close to the words "Guaranteed for Life," "Life Guaranteed," "Guaranteed Life Contract," "Life Contract Guaranteed," or any word or words of similar import, and in print of the same size as the other regular printed matter in its advertisements.

Before *Mr. Andrew B. Duvall*, trial examiner.

Mr. Karl Stecher for the Commission.

Jeffris, Mouat, Oestreich, Wood & Cunningham, of Janesville, Wis., for respondent.

MODIFIED ORDER TO CEASE AND DESIST

This day this proceeding came on again to be heard on the cease and desist order entered herein on the 3d day of May 1945; on the final decree of the United States Circuit Court of Appeals for the Seventh Circuit handed down on the 6th day of June 1947 modifying the afore-said cease and desist order; and the Commission this day having modified its former cease and desist order in conformity with and as directed by the said court;