

IN THE MATTER OF
NATIONAL MODES, INC., ET AL.

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SUBSECTIONS C AND D OF SEC. 2 OF AN ACT OF CONGRESS APPROVED
OCTOBER 15, 1914, AS AMENDED BY AN ACT APPROVED JUNE 19, 1936

Docket 5338. Complaint, June 23, 1945—Decision, Feb. 3, 1950

Where 11 concerns engaged in the the manufacture of women's apparel and in the sale thereof to some 14 retailers in large cities, and to numerous other such retailer clients of a purchasing corporation, which acted as their agent, under the direction of individual B and as associated with a company owned by said retailers and said B, in carrying out a group buying and promotion scheme or program, including national advertising, directed to the resale of women's apparel bearing trade-marks and trade names controlled by the corporation, such as "Caroline" and "Jeanne Barrie"; and which were agents or intermediaries acting in fact for such buyers, exclusively engaged in furnishing to them purchasing and other valuable services in return for certain contract service charges which the buyers obligated themselves to pay—

- (a) From June 19, 1936, until 1942, paid or granted allowances to aforesaid buyers, on sales for the buyers' own accounts, through (1) paying to said purchasing corporation sums which were equal or substantially equal to said contract service fees and were accepted in lieu thereof; (2) paying to an advertising agency of said corporations so-called advertising allowances credited to the corporations, which were not used, in whole or part, to advertise the apparel concerned, and which, to the extent not used, were equal or approximately equal to and in lieu of the direct payments above set forth, and similarly credited; and (3) granting discounts or allowances to such buyers which were substantially equal to the direct payments above set out to the then separately collected contract service fees; and after 1942, when such apparel was in short supply, continued such practices in connection with fewer, but many similar transactions; and

Where said intermediaries, namely, (1) said company, organized in 1925 by representatives of a group of women's apparel retailers and said B, to engage in the group buying and promotion of the resale of women's apparel under the aforesaid trade-marks and trade names, the stock of which was owned exclusively by such retailers and B; (2) said purchasing corporation, organized and controlled by B as an instrumentality for the accomplishment of the aforesaid purposes; and (3) B, himself, who was also a director and secretary of said first company and its exclusive agent in the consumation of its purposes—

- (b) Received and accepted from aforesaid sellers allowances or discounts upon purchases made from them in connection with which said intermediaries acted for their buyer-clients, and transmitted such allowances to the buyers in the form of services and benefits undertaken under the aforesaid contracts and arrangements; and,

Where some 14 retailers of women's wearing apparel, and numerous other similar retailer stockholders in said first company—

- (c) Received and accepted from sellers, as hereinbefore indicated, upon purchases for their own accounts, allowances or discounts in the form of credits, or services or benefits provided by said intermediaries, acting in fact for the buyers:

Held, That the paying and granting of discounts, or allowances in lieu thereof, by said sellers to said intermediaries and buyers; and the receiving and accepting thereof by said intermediaries and buyers; and the transmitting thereof by said intermediaries to said buyers; under the circumstances above set forth, constituted violations of subsection (c) of section 2 of the Clayton Act as amended by the Robinson-Patman Act.

In said proceeding in which various respondents, with the exception of three seller corporations which were legally dissolved prior to the issuance of the complaint, and Gimbel Bros. Inc., which stated that it had ceased to be a stockholder in respondent corporation prior to the issuance thereof, entered into a stipulation of the facts in support of and in opposition to the charges in count 1 of the complaint: the Commission did not dismiss the complaint against Gimbel Bros. as respondent in its capacity as a member of a class consisting of past, present, future stockholders in said intermediary respondents as represented by the named buyer-respondents, since said respondent's failure and refusal to enter into said stipulation as to the facts for the aforesaid reason did not constitute sufficient grounds for such a dismissal; but did dismiss it against Gimbel Bros. as a named respondent, since to continue the proceeding against it in that capacity would further extend the time in which all of the respondents might participate in the illegal practices.

As respects the charges in count 2 in the complaint that some of the respondents violated subsection (d) of section 2 of the Clayton Act, as amended—matters not embraced in the aforesaid stipulation which related exclusively to count 1—the record contained no evidence in support of or in opposition to said charges, and no findings with respect thereto were made.

Mr. Philip R. Layton and *Mr. Eldon P. Schrup* for the Commission.
Covington, Burling, Rublee, O'Brian & Shorb, of Washington, D. C., for National Modes, Inc., Arnold Constable & Co., Auerbach Co., Best's Apparel, Inc., Fowler, Dick & Walker, Hale Bros. Stores, Inc., A. Harris & Co., The Hecht Co., Popular Dry Goods Co., Dalton Co., King's, Inc., Ogus, Rabinovich & Ogus, Inc., and E. M. Scarbrough & Sons.

Spiro, Felstiner & Prager, of New York City, for National Modes Holding Corp. and John Block.

Marshall, Bratter, Seligson & Klein, of New York City, for H. Schreier Co., Junior Deb Coat & Suit Co., Inc., Morris W. Haft & Bros., Inc., Grossman & Spiegel, Inc., Charles Hymen, Inc., Junior Guild Frocks, Inc., Godett & Gross, Inc., Henry Rosenfeld, Inc., Henlo Sportswear, Ltd., Fred Perlberg, Inc., Shelton Coat Corp., Babs Junior, Inc., Shipman & Baker, Inc., and Rubin-Feld, Inc.

Brody & Brody, of Newark, N. J., for Eclipse Knitting Mills, Inc.

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Chadbourne, Wallace, Parke & Whiteside, of New York City, for Gimbel Bros., Inc.

Mann & Tyler, of Norfolk, Va., for Ames & Brownley, Inc.

Demov, Callahan & Morris, of New York City, also represented Morris W. Haft & Bros., Inc.

Mr. Otto A. Samuels, of New York City, also represented Shipman & Baker, Inc.

Buchter, Rathheim, Abrams & Holz, of New York City, also represented Ogus, Rabinovich & Ogus, Inc.

COMPLAINT

COUNT I

The Federal Trade Commission having reason to believe that the parties respondent named in the caption hereof and hereinafter more particularly designated and described, have since June 19, 1936, violated and are now violating the provisions of subsection (c), section 2 of the Clayton Act as amended by the Robinson-Patman Act, approved June 19, 1936 (U. S. C. title 15, sec. 13), hereby issues this complaint stating its charges with respect thereto as follows:

PARAGRAPH 1. Respondent National Modes, Inc., is a corporation organized and existing under and by virtue of the laws of the State of New York with its principal office and place of business at 130 Thirty-first Street, New York, N. Y.

PAR. 2. Respondent National Modes Holding Corp. is a corporation organized and existing under and by virtue of the laws of the State of New York with its principal office and place of business at 130 West Thirty-first Street, in the city of New York, State of New York.

PAR. 3. Respondent John Block, an individual, is a stockholder, officer, and director in each of the respondents National Modes, Inc., and National Modes Holding Corp. and has his principal office and place of business at 130 West Thirty-first Street, New York, N. Y., being the same address of respondents National Modes, Inc., and National Modes Holding Corp. He owns the majority of the capital stock of respondent National Modes Holding Corp. and is secretary and a director of respondent National Modes, Inc. He is president, treasurer, and a director of respondent National Modes Holding Corp. and is also a director of respondent Arnold Constable & Co., a holding corporation which owns and controls the retail dry goods store known as Arnold Constable of New York, N. Y. Said respondent John Block is the active business head of both respondents National Modes, Inc., and National Modes Holding Corp.

PAR. 4. Respondents Hyman Schreier and Ethel Schreier, his wife, are a partnership operating under the firm name of H. Schreier Co., having its principal office and place of business at 525 Seventh Avenue, New York, N. Y.

Respondent Junior Deb Coat & Suit Co., Inc., is a corporation organized and existing under and by virtue of the laws of the State of New York, with its principal office and place of business at 512 Seventh Avenue, New York, N. Y.

Respondent Eclipse Knitting Mills, Inc., is a corporation organized and existing under and by virtue of the laws of the State of New York with its principal office and place of business at 1410 Broadway, New York, N. Y.

Respondent Morris W. Haft & Bros., Inc., is a corporation organized and existing under and by virtue of the laws of the State of New York with its principal office and place of business at 500 Seventh Avenue, New York, N. Y.

Respondent Grossman & Spiegel, Inc., is a corporation organized and existing under and by virtue of the laws of the State of New York with its principal office and place of business at 512 Seventh Avenue, New York, N. Y.

Respondent Charles Hymen, Inc., is a corporation organized and existing under and by virtue of the laws of the State of Illinois with its principal office and place of business at 237 South Market Street, Chicago, Ill.

Respondent Junior Guild Frocks, Inc., is a corporation organized and existing under and by virtue of the laws of the State of Illinois with its principal office and place of business at 847 West Jackson Blvd., Chicago, Ill.

Respondent Godett & Gross, Inc., is a corporation organized and existing under and by virtue of the laws of the State of Illinois with its principal office and place of business at 337 South Franklin Street, Chicago, Ill.

Respondent Henry Rosenfeld, Inc., is a corporation organized and existing under and by virtue of the laws of the State of New York with its principal office and place of business at 498 Seventh Avenue, New York, N. Y.

Respondent Henlo Sportswear, Ltd., is a corporation organized and existing under and by virtue of the laws of the State of New York with its principal office and place of business at 498 Seventh Avenue, New York, N. Y.

Respondent Fred Perlberg, Inc., is a corporation organized and existing under and by virtue of the laws of the State of New York

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with its principal office and place of business at 525 Seventh Avenue, New York, N. Y.

Respondent Shelton Coat Corp. is a corporation organized and existing under and by virtue of the laws of the State of New York with its principal office and place of business at 230 West Thirty-eighth Street, New York, N. Y.

Respondent Babs Junior, Inc., is a corporation organized and existing under and by virtue of the laws of the State of New York with its principal office and place of business at 498 Seventh Avenue, New York, N. Y.

Respondent Shipman & Baker, Inc., is a corporation organized and existing under and by virtue of the laws of the State of New York with its principal office and place of business at 500 Seventh Avenue, New York, N. Y.

Respondent Rubin-Feld, Inc., is a corporation organized and existing under and by virtue of the laws of the State of New York with its principal office and place of business located at 214 West Thirty-ninth Street, New York, N. Y.

The 16 respondents named in this paragraph are hereinafter designated and referred to as "seller-respondents." Said seller-respondents and each of them are, and since June 19, 1936, have been, engaged in the business of manufacturing, selling and distributing women's dresses and women's wearing apparel to numerous buyers, including the "buyer-respondents" hereinafter set out. Said seller-respondents are fairly typical and representative of a large number of manufacturers of women's dresses and women's wearing apparel engaged in the common practice of selling a substantial portion of their products to buyers who purchase through respondents National Modes, Inc., National Modes Holding Corp., and John Block, as intermediaries for buyers. Said seller-respondents are named as parties respondent both individually and as representatives of a group or class of a large number of manufacturers engaged in selling a substantial portion of their products through respondents National Modes, Inc., National Modes Holding Corp., and John Block to the buyer-respondents.

PAR. 5. Respondent Arnold Constable & Co. is a corporation organized and existing under and by virtue of the laws of the State of New York with its principal office and place of business at 453 Fifth Avenue, New York, N. Y.

Respondent Auerbach Co. is a corporation organized and existing under and by virtue of the laws of the State of Utah with its principal office and place of business at Salt Lake City, Utah.

Respondent Best's Apparel, Inc., is a corporation organized and existing under and by virtue of the laws of the State of Washington with its principal office and place of business at Fifth and Pine Streets, Seattle, Wash.

Respondent Fowler, Dick & Walker is a corporation organized and existing under and by virtue of the laws of the State of Pennsylvania with its principal office and place of business at Wilkes-Barre, Pa.

Respondent Gimbel Bros., Inc., is a corporation organized and existing under and by virtue of the laws of the State of New York with its principal office and place of business at Thirty-third and Broadway, New York, N. Y., with a branch located at Ninth and Market Streets, Philadelphia, Pa., which branch is a stockholder in National Modes, Inc.

Respondent Hale Bros. Stores, Inc., is a corporation organized and existing under and by virtue of the laws of the State of Delaware with its principal office and place of business at San Francisco, Calif.

Respondent A. Harris & Co. is a corporation organized and existing under and by virtue of the laws of the State of Texas with its principal office and place of business at Dallas, Tex.

Respondent The Hecht Co. is a corporation organized and existing under and by virtue of the laws of the State of Maryland with its principal office and place of business at Seventh and F Streets NW., Washington, D. C.

Respondent Popular Dry Goods Co. is a corporation organized and existing under and by virtue of the laws of the State of Texas with its principal office and place of business at El Paso, Tex.

Respondent Ames & Brownley, Inc., is a corporation organized and existing under and by virtue of the laws of the State of Virginia with its principal office and place of business at Norfolk, Va.

Respondent Dalton Co. is a corporation organized and existing under and by virtue of the laws of the State of Louisiana with its principal office and place of business at Baton Rouge, La.

Respondent King's Inc., is a corporation organized and existing under and by virtue of the laws of the State of Tennessee with its principal office and place of business at Johnson City, Tenn.

Respondent Ogus, Rabinovich & Ogus, Inc., is a corporation organized and existing under and by virtue of the laws of the State of New York with its principal office and place of business at 2 Park Avenue, New York, N. Y.

Respondents J. W. Scarbrough and L. Scarbrough are a partnership operating under the firm name of E. M. Scarbrough & Sons, having

its principal office and place of business at Congress Avenue and Sixth Street, Austin, Tex.

The 15 respondents named in this paragraph are hereinafter designated and referred to as "buyer-respondents." Each of said buyer-respondents is engaged in the retail dry goods business, and is a stockholder in the respondent National Modes, Inc. Said buyer-respondents are named as parties respondent both individually and as representatives of a group or class of a large number of retail dry goods concerns, each of whom is likewise a stockholder in respondent National Modes, Inc.

PAR. 6. National Modes, Inc., was organized in August of 1925 by respondent John Block and a group of retail dry goods stores, among which are the buyer-respondents named in paragraph 5, to create and promote the sale of "style" women's dresses and women's wearing apparel under brands, labels, and trade-marks owned and controlled by such retailers and respondent National Modes, Inc., the principal trade-marked labels being "Carolyn" and "Jeanne Barrie."

Respondents, National Modes, Inc., National Modes Holding Corp. and John Block are now, and since the time of the incorporation and organization of National Modes, Inc., and National Modes Holding Corp. have been, engaged in the business of providing purchasing and other services for the buyer-respondents named in paragraph 5 hereof and for other buyers.

In the course and conduct of their business respondents National Modes, Inc., National Modes Holding Corp. and John Block receive orders for women's dresses and women's wearing apparel from the buyer-respondents and other buyers to purchase such products as agents for the buyers and transmit such orders to the seller-respondents and other sellers. As a result of the transmission of said orders by said buyers to respondents National Modes, Inc., National Modes Holding Corp. and John Block, the placing of same by said respondents for or in behalf of said buyers, and the acceptance of said orders by said seller-respondents and other sellers, women's dresses and women's wearing apparel are by each of said seller-respondents and other sellers shipped from the State in which such merchandise is located at the time of sale into and through the various other States of the United States directly to each of said buyer-respondents and to other buyers.

In the course of the buying and selling transactions above set out said seller-respondents since June 19, 1936, have transmitted, paid, and delivered, and do transmit, pay, and deliver to respondents National Modes, Inc., National Modes Holding Corp., and John Block

so-called brokerage fees and commissions or allowances and discounts in lieu of such brokerage fees and commissions, the same being certain percentages of the quoted sales prices agreed upon by said seller-respondents and other sellers with respondents National Modes, Inc., National Modes Holding Corp., and John Block. The three respondents last named since June 19, 1936, have received and accepted and are receiving and accepting such so-called brokerage fees, commissions, or allowances and discounts in lieu thereof upon the purchases of the buyer-respondents and other buyers.

PAR. 7. National Modes, Inc., has divided its stock into three separate classes which are as follows: 50 shares of class A stock of the par value of \$100 each, 100 shares of class B stock of the par value of \$100 each and 50 shares of class C stock without nominal or par value. Class A and class B stock is owned and can be owned only by retailers of women's dresses and women's wearing apparel. Since the incorporation of both respondents National Modes, Inc., and National Modes Holding Corp., in 1925 respondent John Block has been the sole owner of the class C stock. Class A stock is owned by retailers of women's dresses and women's wearing apparel whose annual business is in excess of \$250,000. The class B stock is held by retailers of women's dresses and women's wearing apparel whose annual business is less than \$250,000. No more than one share of class A or class B stock may be held by a single retailer for each city in which such retailer conducts a retail dry goods store.

The class A stock is held by approximately 28 retail dry goods stores located in the larger cities of the United States; the class B stock is held by approximately 60 retail dry goods stores located in the larger cities of the United States. No two of such stores are located in the same city. In addition to the stockholder customers of respondent National Modes, Inc., holding the class A and B stock there are approximately 60 retail dry goods stores situated throughout the country which are not stockholders but which purchase their requirements of women's dresses and women's wearing apparel through respondents National Modes, Inc., National Modes Holding Corp., and John Block. Such stores are potential stockholders and are permitted by respondents National Modes, Inc., National Modes Holding Corp., and John Block to participate in the benefits and services rendered by said respondents in the same manner, form, and degree as the stores which are stockholders in respondent National Modes, Inc.

PAR. 8. Immediately upon the organization of respondents National Modes, Inc., and National Modes Holding Corp., a contract was ef-

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fected between said respondents and each of the stores having stock in National Modes, Inc. The provisions of said contract are as follows:

Agreement made this _____ day of _____ 19____, by and between National Modes, Inc. (hereinafter called "corporation"), party of the first part, National Modes Holding Corporation (hereinafter sometimes called the "Holding Corporation"), party of the second part, and _____ (hereinafter called the "Stockholder"), party of the third part, Witnesseth:

Whereas, the parties of the first and second part are interested and are cooperating in the creation, acquisition and development of certain trade-marks and trade names, and in the creation and popularization of styles and in the sale of merchandise bearing any such trade-marks or trade names; and

Whereas, the Stockholder is or desires to become a stockholder of such Corporation, and the parties of the first and second part have entered into and may enter into contracts similar to this contract with other stockholders of the corporation;

Now, therefore, in consideration of the premises, of the mutual agreements of the parties, of one dollar and other good and valuable considerations, receipt whereof is hereby acknowledged, the parties do hereby agree as follows:

1. The parties of the first and second part agree to use their best efforts to create and develop said trade-marks and trade names in connection with specialized lines of apparel and other merchandise, to create, use and popularize styles and merchandise in connection with which said trade-marks or trade names are to be used or applied, to choose and designate manufacturers or producers of merchandise bearing said trade-marks or trade names and generally to supervise said manufacture, to advertise nationally such trade-marks and trade names and merchandise bearing the same and to render such other services in connection therewith as they may deem necessary or advisable, to render the name valuable and generally to advance the interests of the Corporation and the Stockholders.

2. The Stockholder is hereby granted the sole and exclusive right to sell merchandise bearing any such trade-marks and/or trade names in the city of _____ and within a radius of _____ miles thereof. Said Stockholder is also to have the right to fill mail orders for any such merchandise.

3. The Stockholder agrees to pay National Modes Holding Corporation a commission upon the net invoice cost of merchandise selected by the Corporation to bear any such trade-marks or trade names purchased by the Stockholder in any fiscal year, said commission to be paid on the tenth day of each month upon invoices bearing the previous month's date as follows:

4% on purchases by the Stockholder on coats, suits, furs, underwear, bags and millinery; and dresses costing over \$10.75 each.

3% on purchases by the Stockholder on dresses costing up to and including \$10.75.

2% on all purchases of hosiery.

4. The advertising expenses of the Corporation shall be paid from a fund to be subscribed through the payment of one percent (1%) by each stockholder of the net amount of purchases made by the Holding Corporation for the account of such stockholder.

5. The Stockholder agrees that it will not use or apply any such trademark or trade name in connection with any merchandise except such as may have been selected or approved by the Style Committee or Committees of the Corporation and agrees that any merchandise bearing any such trade name or trade-mark will be purchased by said Stockholder only from such sources as may be designated by the Corporation. The Stockholder will place all orders or reorders through the Corporation. The Stockholder agrees further that it will not sell through branches or otherwise any such merchandise in any locality other than the city of _____ and within a radius of _____ miles thereof, except that it may fill mail orders as aforesaid, irrespective of the territory in which any said mail orders may originate.

6. In the event that the Stockholder shall offer for sale any such merchandise below the established price, it must first remove the labels containing any such trade-mark or trade name and in such event such merchandise shall not be advertised or represented as having any connection with any of such trade-marks or trade names.

7. The Stockholder agrees that it will locally advertise and push the sale of the merchandise bearing any such trade-mark or trade name.

8. The Stockholder agrees that it will purchase a minimum amount of such merchandise, to be determined from time to time by the Executive Committee upon a basis which shall be proportioned according to the ready-to-wear volume of the Stockholder or the population of the cities in which the respective Stockholders operate.

9. This agreement shall cease to be operative if and when the Stockholder shall cease to be a Stockholder of the Corporation, except that in such event the stockholder shall not be released from any obligations or liability theretofore incurred hereunder.

10. This agreement shall be binding upon and inure to the benefit of the successors and assigns of the Corporation and of the Stockholder; and shall be binding upon and inure to the benefit of National Modes Holding Corporation or any successor thereof so long as Mr. John Block shall own and continue to own the majority of the capital stock thereof, and so long as he shall continue in the management thereof, and so long as said National Modes Holding Corporation, or its successors, shall engage in no enterprise except in connection with the business of National Modes, Inc.

11. The Stockholder may terminate this agreement by giving to the Corporation at least ninety (90) days' notice in writing of its intention so to do, but such cancellation shall not effect in any way any obligation of the Stockholder theretofore incurred hereunder.

In witness whereof, the parties have executed this agreement the day and year first above mentioned.

NATIONAL MODES, INC.,

By _____

NATIONAL MODES HOLDING CORPORATION,

By _____

(Stockholder)

By _____

Pursuant to the agreement above set forth, respondents National Modes, Inc., National Modes Holding Corp., and John Block receive from the stockholders of National Modes, Inc., being the buyer-re-

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spondents herein named, so-called buying fees. The so-called buying fees are paid on a percentage basis and are predicated on the net invoice cost of merchandise, as follows:

1. Two percent of the invoice cost for women's hosiery.
2. Three percent of the invoice cost for women's dresses, coats, suits and other women's wearing apparel which are purchased at a wholesale price of less than \$10.75 each.
3. Four percent of the invoice price on women's dresses, coats, suits and other women's wearing apparel which are purchased at a wholesale price of more than \$10.75 each.
4. One percent of the invoice price of all purchases made by the buyer-respondents herein named through respondents National Modes, Inc., National Modes Holding Corp., and John Block, for the advertising of brands, labels, and trade-marks owned and controlled by respondent National Modes, Inc.

PAR. 9. At the time the contract above set forth was executed agreements were also executed between National Modes Holding Corp. and retailers of women's dresses and women's wearing apparel not stockholders of the National Modes, Inc. The provisions of such agreements are as follows:

AGREEMENT made this day between NATIONAL MODES HOLDING CORPORATION, of 130 West 31st Street, hereinafter known as the Corporation, and of _____ hereinafter known as the Retailer, for the period of _____ and ending _____.

IT IS UNDERSTOOD that the Retailer shall have the right to publicize and advertise the names of "CAROLYN" and "JEANNE BARRIE" exclusively in the city of _____ for the duration of this contract; and that the name of the Retailer will be listed in all advertisements in national publications run by the Corporation, where there is a listing of retailers names.

THE RETAILER AGREES to take a minimum amount of garments per month, and his orders are herewith attached.

IT IS UNDERSTOOD, however, that at no time will the retailer offer for sale any garment below its agreed advertised price without first removing the label, and thereafter the names of "CAROLYN" or "JEANNE BARRIE" will not be mentioned in connection with the sale or advertising of such garment.

THE RETAILER AGREES to pay monthly to the Corporation 4% of the net purchase price of all garments costing up to and including \$10.75, and 5% above \$10.75, it being understood that there will be an equal percentage of savings on cost price for the Retailer, effected by the Corporation. This is to apply to all orders as well as reorders shipped to the Retailer. The Retailer agrees to place all orders and reorders through the Corporation's New York Office.

IT IS AGREED that either party to this contract has the right to cancel same at any time before its expiration by giving sixty (60) days written notice, by registered mail, to the other party.

IT IS FURTHER AGREED that matters contained herein, together with the attached order for merchandise, and for copies of the Corporation's mailing brochures, constitute the entire agreement between us.

NATIONAL MODES HOLDING CORP.

Pursuant to the agreement above set forth, nonstockholding retail dry goods stores which purchase merchandise through respondents National Modes, Inc., National Modes Holding Corp. and John Block bearing the brands owned and controlled by respondent National Modes, Inc., pay to respondents National Modes, Inc., National Modes Holding Corp., and John Block, as a so-called buying fee 4 percent on articles of clothing including women's dresses, suits, and coats which are purchased at a wholesale price of less than \$10.75 each and 5 percent on such garments which are purchased at a wholesale price of more than \$10.75 each.

PAR. 10. Respondents National Modes, Inc., National Modes Holding Corp., and John Block, pursuant to an understanding and agreement between them and the buyer-respondents and other buyers, induce and have induced the seller-respondents herein named and other sellers to allow them on purchases of women's dresses, coats, suits, and other women's wearing apparel made for the retailer-stockholders of National Modes, Inc., and other retailers, a 4 percent lower price on such articles of clothing which wholesale for less than \$10.75 each, and at a 5 percent lower price on such articles of clothing which wholesale for more than \$10.75 each than said sellers allow to competitors of said retailers. This preferential discount of 4 or 5 percent as the case may be is in some instances paid by the seller-respondents and other sellers direct to the buyer-respondents and to buyers with contracts described in paragraph 9 hereof in the form of a reduced price for the articles of clothing purchased. In other instances, the seller-respondents and other sellers pay directly to respondents National Modes, Inc., National Modes Holding Corp., and John Block a brokerage fee and commission equal to 4 percent of the wholesale price of women's dresses, coats, suits, and other women's wearing apparel costing less than \$10.75 each and 5 percent of the wholesale price of such articles of clothing costing in excess of \$10.75 each.

Where the 4 or 5 percent allowance or discount in lieu of brokerage is paid directly by the seller-respondents and other sellers to the stockholders of respondent National Modes, Inc., and other retailers, such stockholders and retailers transmit it to respondents National Modes,

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Inc., National Modes Holding Corp., and John Block in the form of so-called buying fees. In the instances where the seller-respondents and other sellers pay directly to respondents National Modes, Inc., National Modes Holding Corp., and John Block a brokerage fee and commission or an allowance or discount in lieu thereof in the amount of 4 or 5 percent on the invoice price of women's dresses, coats, suits, and other women's wearing apparel, the buyers are not required to pay so-called buying fees on such purchases.

PAR. 11. On occasion some seller-respondents and other sellers will not allow the discount and allowance to appear as such on the invoices representing purchases by the buyer-respondents and other buyers. On such occasions the buyer-respondents and other buyers are secretly advised by such sellers, when remitting payment for the articles of clothing so purchased, to deduct from the net invoice price the discount or allowance of 4 or 5 percent, as the case may be.

Some seller-respondents and other sellers will not allow the buyers to deduct the discount and allowance when remitting payment for the merchandise so purchased nor do they pay direct to respondents National Modes, Inc., National Modes Holding Corp., and John Block the brokerage fees and commissions on the separate purchases of the respective buyer-respondents and other buyers. However, such seller-respondents and other such sellers do allow respondents National Modes, Inc., National Modes Holding Corp., and John Block to periodically audit their sales records for the purpose of determining the accumulated amounts of brokerage fees and commissions upon the purchases of buyer-respondents and other buyers to the three respondents last named.

Respondents National Modes, Inc., National Modes Holding Corp., and John Block refuse to purchase any merchandise from any sellers who will not allow to them or to the buyer-respondents and other buyers a brokerage fee and commission or a discount or allowance in lieu thereof upon the purchases of the stockholders of National Modes, Inc., or other retailers purchasing through said three respondents.

The brokerage fees and commissions or allowances or discounts in lieu thereof received by respondents National Modes, Inc., National Modes Holding Corp., and John Block, either directly from the seller-respondents and other sellers or indirectly from the seller-respondents and other sellers through the buyer-respondents and other buyers, upon the purchases of the buyer-respondents and other buyers are used by the three respondents, after the payment of operating expenses and the payment of dividends on stock to the stockholders of respond-

ents National Modes, Inc., and National Modes Holding Corp., to perform valuable service and to furnish valuable facilities for and to promote in behalf of the buyer-respondents and other buyers the sale of brands; labels and trade-marks owned and controlled by respondent National Modes, Inc.

PAR. 12. In all of the buying and selling transactions hereinabove referred to, the so-called brokerage fees and commissions or allowances and discounts in lieu thereof are paid and transmitted by the seller-respondents and other sellers to and are accepted and received by respondents National Modes, Inc., National Modes Holding Corp., and John Block while said respondents are acting in fact for and in behalf of the buyer-respondents and other buyers and no services whatever have been rendered or are now being rendered in connection with such purchases for or to said seller-respondents and other sellers by the three respondents last named or by said buyer-respondents and other buyers.

The so-called brokerage fees and commissions or discounts and allowances in lieu thereof are paid by the seller-respondents and other sellers to respondents National Modes, Inc., National Modes Holding Corp., and John Block and are transmitted to and received by the buyer-respondents and other buyers in the form of services performed and facilities furnished by said respondents while acting as intermediaries for and in behalf of said buyer-respondents and other buyers.

PAR. 13. The transmission and payment of said so-called brokerage fees and commissions or discounts and allowances in lieu thereof by the seller-respondents and other sellers to respondents National Modes, Inc., National Modes Holding Corp., and John Block upon the purchases of buyer-respondents and other buyers, and the receipt and acceptance thereof by the three respondents last named, or by the buyer-respondents and other buyers in the manner and under the circumstances hereinabove set forth are in violation of the provisions of section 2, subsection (c) of the Clayton Act as amended by the Robinson-Patman Act approved June 19, 1936.

COUNT II

The Federal Trade Commission, having reason to believe that the parties respondent named in paragraph 1 of count II hereof, since June 19, 1936, have violated and are now violating the provisions of subsection (d) of section 2 of the Clayton Act (U. S. C. title 15, sec. 13) as amended by the Robinson-Patman Act, approved June 19,

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1936, hereby issues this complaint, stating its charges with respect thereto as follows:

PARAGRAPH 1. Respondents Babs Junior, Inc., Morris W. Haft & Bros., Inc., Shipman & Baker, Inc., Shelton Coat Corp., and Henlo Sportswear, Ltd., as more particularly described in paragraph 4 of count I hereof, are engaged in the business of manufacturing, selling, and distributing women's dresses and women's wearing apparel to numerous buyers including National Modes, Inc., National Modes Holding Corp., John Block and the Buyers named in paragraph 5 of count I hereof. Said respondents sell and distribute their products in commerce between and among the various States of the United States and in the District of Columbia and as a result of such sales cause the said products to be shipped and transported from their respective places of business to purchasers thereof who are located in various other States of the United States. There is and has been at all times mentioned herein a continuous course of trade and commerce in women's dresses and women's wearing apparel across State lines between respondents' factories and the purchasers of said products.

Said respondents' enterprises are operated with the ultimate objective of marketing their women's dresses and women's wearing apparel through retail department stores and other retail dry goods establishments to the consuming public in all parts of the United States.

PAR. 2. In the course and conduct of their business as aforesaid the respondents named in paragraph 1 of count II hereof are now and during all the time herein mentioned have been in competition with other corporations and with individuals, partnerships and firms engaged in the business of manufacturing, selling and distributing women's dresses and women's wearing apparel in commerce. Many of said respondents' retail department store customers and dry goods store customers are competitively engaged with each other and with customers of respondents' competitors in the resale of women's dresses and women's wearing apparel within the trading areas in which the respondents' said retailer-customers, respectively, offer for sale and sell the said products purchased from the respondents through National Modes, Inc., National Modes Holding Corp., and John Block.

PAR. 3. In the course and conduct of their business in commerce respondents named in paragraph 1 of count II since June 19, 1936, have secretly paid and agreed to pay to National Modes, Inc., National Modes Holding Corp., John Block and to retailers purchasing women's dresses and women's wearing apparel through them certain sums of

money as compensation for and in consideration of advertising and promotional services furnished by them and by such retailers in connection with the sale and offering for sale of women's dresses and women's wearing apparel under registered trade-marks such as "Carolyn," "Jeanne Barrie," and others. The making of such payments by the respondents named in paragraph 1 of count II hereof was concealed by said respondents from competitors of said National Modes, Inc., National Modes Holding Corp., John Block and from competitors of other buyers purchasing women's dresses and women's wearing apparel from said respondents. Respondents did not make such payments available on proportionally equal terms or on any terms to other purchasing agents and retailers of women's dresses and women's wearing apparel who compete in the sale and distribution of such products purchased from respondents.

PAR. 4. It has been the policy of respondents named in paragraph 1 of count II hereof to conceal from all of their customers, except those favored by respondents, the details of their agreements relating to compensation of customers for services in connection with advertising and promotional facilities. Other customers of respondents are denied knowledge of such allowances and compensation and the respondents have not and do not make it known to any of their customers except their favored ones that they pay compensation for advertising and promotional services in connection with the sale of women's dresses and women's wearing apparel to the consuming public. Respondents have resisted the extension of such allowances to some purchasers of women's dresses and women's wearing apparel even though such purchasers were willing to give advertising and promotional services to respondents in connection with the sale of such women's dresses and women's wearing apparel to the consuming public.

PAR. 5. The above described acts and practices of respondents named in paragraph 1 of count II hereof are in violation of subsection (d) of section 2 of the Clayton Act as amended by the Robinson-Patman Act approved June 19, 1936 (U. S. C. title 15, sec. 13).

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an act of Congress entitled "An act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914 (the Clayton Act), as amended by an act of Congress approved June 19, 1936 (the Robinson-Patman Act), and by virtue of the authority vested in the Federal Trade Commission by the aforesaid act, the Federal Trade

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Commission, on June 23, 1945, issued and subsequently served its complaint in this proceeding upon the respondents named in the caption hereof charging all of them in count I thereof with violation of the provisions of subsection (c) and some of them in count II thereof with violation of the provisions of subsection (d) of section 2 of the said Clayton Act, as amended by the Robinson-Patman Act. After the issuance of said complaint and the filing of respondents' answers thereto, a written stipulation as to the facts was entered into by and between Everette MacIntyre, Assistant Chief Trial Counsel of the Commission, and each of the respondents except Charles Hymen Dresses, Inc. (named in the complaint as Charles Hymen, Inc.), Henlo Sportswear, Ltd., Babs Junior, Inc., Rubin-Feld, Inc., and Gimbel Bros., Inc., in which it was provided that subject to the approval of the Commission the statement of facts contained therein, which were exclusively in support of and in opposition to the charges in count I of said complaint, may be taken as the facts in this proceeding in lieu of testimony in support of and in opposition to the charges made in both counts of said complaint and that the Commission may proceed upon such statement of facts to make its report stating its findings as to the facts (including inferences which may be drawn from said stipulated facts) and its conclusion based thereon and enter its order disposing of this proceeding without the presentation of arguments or the filing of briefs.

Thereafter this proceeding came on for final hearing before the Commission upon the complaint and the stipulations as to the facts, said stipulations having been approved, accepted, and filed; 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. (a) Respondent National Modes, Inc. (sometimes hereinafter referred to as the Corporation), is a corporation organized and existing under and by virtue of the laws of the State of New York, with its office and principal place of business located at 130 West Thirty-first Street, New York, N. Y.

(b) The stockholders of the Corporation are retail women's apparel stores, including buyer respondents, and respondent John Block. The Corporation has owned and controlled the trade-marks and trade names "Carolyn" and "Jeanne Barrie" which have been used to identify women's apparel which has been purchased by Respondent

National Modes Holding Corp. from manufacturers thereof, including seller respondents, as agent for, and for resale so identified by, the stockholders of the Corporation (except Respondent John Block) and other retail women's apparel stores. The Corporation has also advertised such branded apparel so purchased in magazines and periodicals of national circulation and otherwise promoted its resale in the hands of its stockholders and such other retail stores.

PAR. 2. (a) Respondent National Modes Holding Corp. (sometimes hereinafter referred to as the Holding Corporation), is a corporation organized and existing under and by virtue of the laws of the State of New York, with its office and principal place of business also located at 130 West Thirty-first Street, New York, N. Y.

(b) The majority of the capital stock of the Holding Corporation is owned or controlled by respondent John Block. Under the terms of contracts hereinafter set forth with the Corporation and the Corporation's stockholders, except Respondent John Block, and of contracts with other retail women's apparel stores (all of which contracting stockholders and retailers are sometimes hereinafter referred to as clients), the Holding Corporation has engaged in the business of purchasing from seller respondents and other sellers women's apparel bearing the trade-marks and trade names owned by the Corporation as agent for, and for resale by its clients and in advertising the branded apparel so purchased in magazines and periodicals of national circulation and otherwise promoting its resale in the hands of its clients.

PAR. 3. (a) Respondent John Block is an individual who also has his office and principal place of business located at 130 West Thirty-first Street, New York, N. Y.

(b) Said respondent, in addition to being the majority stockholder, is also a director and the president, treasurer, and chief executive officer of the Holding Corporation. As such he determines all of its major questions of policy, but he does not participate in the routine daily transactions which are performed by subordinate employees.

(c) Said respondent, in addition to being a stockholder, is also a director and the secretary of the Corporation. He is also the exclusive agent of the Corporation in the consummation of the purposes of that respondent under the terms of a contract hereinafter set forth inuring to the benefit of the Holding Corporation.

(d) Respondents National Modes Holding Corp., National Modes, Inc., and John Block are sometimes hereinafter referred to collectively as intermediary respondents.

PAR. 4. (a) (1) Respondents Hyman Schreier and Ethel Schreier, his wife, are a partnership operating under the firm name of H. Schreier Co., having its principal office and place of business at 525 Seventh Avenue, New York, N. Y.

(2) Respondent Junior Deb Coat & Suit Co., Inc., is a corporation organized and existing under and by virtue of the laws of the State of New York, with its principal office and place of business at 512 Seventh Avenue, New York, N. Y.

(3) Respondent Eclipse Knitting Mills, Inc., is a corporation organized and existing under and by virtue of the laws of the State of New York with its principal office and place of business at 1410 Broadway, New York, N. Y.

(4) Respondent Morris W. Haft & Bros., Inc., is a corporation organized and existing under and by virtue of the laws of the State of New York with its principal office and place of business at 500 Seventh Avenue, New York, N. Y.

(5) Respondent Grossman & Spiegel, Inc., is a corporation organized and existing under and by virtue of the laws of the State of New York with its principal office and place of business at 512 Seventh Avenue, New York, N. Y.

(6) Respondent Junior Guild Frocks, Inc., is a corporation organized and existing under and by virtue of the laws of the State of Illinois with its principal office and place of business at 847 West Jackson Boulevard, Chicago, Ill.

(7) Respondent Godett & Gross, Inc., is a corporation organized and existing under and by virtue of the laws of the State of Illinois with its principal office and place of business at 337 South Franklin Street, Chicago, Ill.

(8) Respondent Henry Rosenfeld, Inc., is a corporation organized and existing under and by virtue of the laws of the State of New York with its principal office and place of business at 498 Seventh Avenue, New York, N. Y.

(9) Respondent Fred Perlberg, Inc., is a corporation organized and existing under and by virtue of the laws of the State of New York with its principal office and place of business at 525 Seventh Avenue, New York, N. Y.

(10) Respondent Shelton Coat Corp. is a corporation organized and existing under and by virtue of the laws of the State of New York with its principal office and place of business at 230 West Thirty-eighth Street, New York, N. Y.

(11) Respondent Shipman & Baker, Inc., is a corporation organized and existing under and by virtue of the laws of the State of New

York, with its principal office and place of business at 500 Seventh Avenue, New York, N. Y.

(B) The 11 respondents above named are hereinafter referred to as seller respondents. Each of them is engaged in the business of manufacturing women's apparel and selling it to (among other buyers) some or all of the buyer respondents and other clients of the Holding Corporation, which makes such purchases as agent for such clients.

(c) The Holding Corporation also purchases as agent for its clients from other manufacturers of women's apparel in the same manner as it purchases from seller respondents, but the total number of such manufacturers is so large that it would be manifestly inconvenient and burdensome to join all of them as parties respondent. Seller respondents are, therefore, named as parties respondent both individually and as representative of all manufacturers from whom the Holding Company purchases for its clients.

PAR. 5. (a) (1) Respondent Arnold Constable & Co. is a corporation organized and existing under and by virtue of the laws of the State of New York with its principal office and place of business at 453 Fifth Avenue, New York, N. Y.

(2) Respondent Auerbach Co. is a corporation organized and existing under and by virtue of the laws of the State of Utah with its principal office and place of business at Salt Lake City, Utah.

(3) Respondent Best's Apparel, Inc., is a corporation organized and existing under and by virtue of the laws of the State of Washington with its principal office and place of business at Fifth and Pine Streets, Seattle, Wash.

(4) Respondent Fowler, Dick & Walker is a corporation organized and existing under and by virtue of the laws of the State of Pennsylvania with its principal office and place of business at Wilkes-Barre, Pa.

(5) Respondent Gimbel Bros., Inc., is a corporation organized and existing under and by virtue of the laws of the State of New York with its principal office and place of business at Thirty-third and Broadway, New York, N. Y., with a branch located at Ninth and Market Streets, Philadelphia, Pa., which branch is referred to in subparagraph (b) below.

(6) Respondent Hale Bros. Stores, Inc., is a corporation organized and existing under and by virtue of the laws of the State of Delaware with its principal office and place of business at San Francisco, Calif.

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(7) Respondent A. Harris & Co. is a corporation organized and existing under and by virtue of the laws of the State of Texas with its principal office and place of business at Dallas, Tex.

(8) Respondent The Hecht Co. is a corporation organized and existing under and by virtue of the laws of the State of Maryland with its principal office and place of business at Seventh and F Streets NW., Washington, D. C.

(9) Respondent Popular Dry Goods Co. is a corporation organized and existing under and by virtue of the laws of the State of Texas with its principal office and place of business at El Paso, Tex.

(10) Respondent Ames & Brownley, Inc., is a corporation organized and existing under and by virtue of the laws of the State of Virginia with its principal office and place of business at Norfolk, Va.

(11) Respondent Dalton Co. is a corporation organized and existing under and by virtue of the laws of the State of Louisiana with its principal office and place of business at Baton Rouge, La.

(12) Respondent King's, Inc., is a corporation organized and existing under and by virtue of the laws of the State of Tennessee with its principal office and place of business at Johnson City, Tenn.

(13) Respondent Ogus, Rabinovich & Ogus, Inc., is a corporation organized and existing under and by virtue of the laws of the State of New York with its principal office and place of business at 2 Park Avenue, New York, N. Y.

(14) Respondents J. W. Scarbrough and L. Scarbrough are a partnership operating under the firm name of E. M. Scarbrough & Sons, having its principal office and place of business at Congress Avenue and Sixth Street, Austin, Tex.

(b) The 14 respondents above named are hereinafter referred to as buyer respondents. Each of them is a stockholder of the Corporation and engaged in business selling women's apparel at retail, some of which was purchased for it by the Holding Corporation from seller respondents and other sellers, except that buyer respondent Gimbel Bros., Inc., was a stockholder only from February 5, 1938, to July 13, 1944.

(c) Buyer respondents are not all of the stockholders or former stockholders of the Corporation for whom the Holding Corporation has purchased in the same manner as for buyer respondents, but the total number of such stockholders is so large that it would be manifestly inconvenient and burdensome to join all of them as parties respondent. Buyer respondents are, therefore, named as parties respondent both individually and as representative of all of the stockholders of the Corporation.

PAR. 6. (a) The corporation was organized in August 1925 by Respondent John Block and representatives of a group of women's apparel retailers, among which were buyer respondents Best's Apparel, Inc., Popular Dry Goods Co., and E. M. Scarbrough & Sons, to engage in group buying and promotion of the resale of women's apparel bearing the trade-marks and trade names owned and controlled by the Corporation such as "Carolyn" and "Jeanne Barrie," and to facilitate such purposes by the acts and practices herein found.

(b) The Corporation has three classes of capital stock, namely, class A, of which there are 50 shares with a par value of \$100 each; class B, of which there are 100 shares with a par value of \$100 each; and class C, of which there are 50 shares without par value. All of class C stock is now and has been since the formation of the Corporation owned or controlled by Respondent John Block. Class A and class B stock is and can be owned only by retailers of women's apparel, class A being limited to such retailers whose annual volume of business in the ready-to-wear department is in excess of \$250,000, and class B being limited to such retailers whose annual volume of business in the ready-to-wear department is less than \$250,000. Class A stock is owned by approximately 28 retail women's apparel stores, including some buyer respondents, and class B stock is owned by approximately 46 such stores, including some buyer respondents. All of such stores are located in the larger cities of the United States, and no two of such stores are located in the same city. No retailer may own more than one share of class A or class B stock for each city in which such retailer operates a store.

PAR. 7. (a) Immediately after the organization of the Corporation, it entered into the following agreement with respondent John Block:

AGREEMENT made this 17th day of August, 1925, by and between NATIONAL MODES, INC. (hereinafter called the "Corporation"), party of the first party, and JOHN BLOCK (hereinafter called "Mr. Block") party of the second part, WITNESSETH:

In consideration of the mutual agreements of the parties, of one dollar and other good and valuable considerations, by each party to the other in hand paid, receipt of which is hereby acknowledged, the parties do hereby agree as follows:

1. The parties agree to cooperate in creating, acquiring and developing trade-marks and trade names, and in procuring the sale of merchandise, bearing the same, in advertising nationally said trade-marks and trade names and merchandise bearing the same, and in the creation and popularization of styles in connection therewith, and generally to foster the interests of the stockholders of the Corporation.

2. The Corporation shall own such trade-marks and trade names.

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3. The Corporation agrees to appoint and hereby does appoint Mr. Block its exclusive agent in the consummation of the aforesaid purposes, and in charge of the general management of the proposed plan and business upon the terms and conditions hereinafter set forth.

4. Organization expenses of the Corporation, corporate taxes of every kind, expenses in connection with procuring and protecting the trade-marks and trade names of the Corporation, advertising expenses, and such other expenses as the Board of Directors may from time to time designate shall be borne by the Corporation. All other expenses in connection with the accomplishment of the aforesaid purposes shall be borne and paid by the party of the second part.

5. The parties hereto shall enter into an agreement with each stockholder of the Corporation substantially in the form annexed hereto, marked "B", and made a part hereof.

6. Upon the vote or written consent of three-fourths of the Class A stockholders of the Corporation, this contract may be cancelled by the Corporation. In the event of such cancellation by the Corporation, or upon the death or incapacity of Mr. Block, the Corporation may at its option purchase from Mr. Block, or his estate, or his successor, as the case may be, the shares of Class C stock of the Corporation owned by him, his estate, or successor, as aforesaid, and shall pay therefor a sum equal to fifty percent (50%) of such portion of the fair value of the business, property, assets and good-will of said Corporation, as shall exceed the aggregate amount that shall have been paid into the Corporation by the Class A and Class B stockholders for their stock. If the parties concerned cannot agree upon the fair value of such property, assets, business and good-will, the same shall be determined by a majority of the Board of Directors of the Corporation. Payment of the amount so fixed shall be made within one year after such cancellation, death or incapacity.

7. In the event that the party of the second part shall desire to retire from the enterprise, he shall offer in writing to surrender to the Corporation all of his rights hereunder at a price to be determined as hereinbefore set forth in the case of cancellation hereof, or the death or incapacity of the party of the second part. If the Corporation desires to purchase said rights at the price so determined, it shall signify its willingness so to do by written notice to such effect mailed or delivered to Mr. Block or his legal representatives or successor, within sixty (60) days after such offer shall have been received by the Corporation, and payment in such case shall be made within one year from the date of the receipt of such offer. Upon such payment to the party of the second part, in any of the events above specified, he or his legal representative or representatives or successor will redeliver to the Corporation the shares of Class C stock thereof owned by him, said representative or representatives or successor, and this contract will be of no further force or effect and the agency granted hereunder shall thereupon terminate.

8. This contract shall be binding upon and inure to the benefit of the successors and assigns of the Corporation, of Mr. Block or any holding corporation which he may organize or cause to be organized, and in which and so long as he shall own and continue to own a majority of the capital stock thereof, and so long as he shall continue in the management thereof, provided, however, that any such corporation that Mr. Block may organize or cause to be organized shall be subject to the approval of the Board of Directors of National Modes,

Inc., and shall engage in no enterprise except in connection with the business of National Modes, Inc.

IN WITNESS WHEREOF, the parties hereto have executed this agreement, the day and year first above mentioned.

NATIONAL MODES, INC.

(Signed) WILLIAM B. THALHEIMER (*pres.*)

(Signed) JOHN BLOCK (*L. S.*)

(b) Pursuant to the terms of paragraph numbered 8 of said contract and shortly after its execution, respondent John Block organized or caused to be organized respondent National Modes Holding Corp., with himself as majority stockholder, a director, the president, and chief executive officer.

PAR. 8. (a) After the organization of the Holding Corporation and pursuant to paragraph numbered 5 in the agreement set forth in paragraph 7 (a), the Corporation and the Holding Corporation entered into contracts with each of the stockholders of the Corporation, except respondent John Block.

(b) The provisions of said contracts were substantially as follows:

AGREEMENT made this _____ day of _____ 19____, by and between NATIONAL MODES, INC. (hereinafter called the "Corporation"), party of the first part, NATIONAL MODES HOLDING CORPORATION (hereinafter sometimes called the "Holding Corporation"), party of the second part, and _____ (hereinafter called the "Stockholder,"), party of the third part, WITNESSETH:

WHEREAS, the parties of the first and second part are interested and are cooperating in the creation, acquisition and development of certain trade-marks and trade names, and in the creation and popularization of styles and in the sale of merchandise bearing any such trade-marks or trade names; and

WHEREAS, the Stockholder is or desires to become a stockholder of such corporation, and the parties of the first and second part have entered into and may enter into contracts similar to this contract with other stockholders of the Corporation:

NOW, THEREFORE, in consideration of the premises, of the mutual agreements of the parties, of one dollar and other good and valuable considerations, receipt whereof is hereby acknowledged, the parties do hereby agree as follows:

1. The parties of the first and second part agree to use their best efforts to create and develop said trade-marks and trade names in connection with specialized lines of apparel and other merchandise, to create, use and popularize styles and merchandise in connection with which said trade-marks or trade names are to be used or applied, to choose and designate manufacturers or producers of merchandise bearing said trade-marks or trade names and generally to supervise said manufacture, to advertise nationally such trade-marks and trade names and merchandise bearing the same and to render such other services in connection therewith as they may deem necessary or advisable, to render the same valuable, and generally to advance the interests of the Corporation and the Stockholders.

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2. The Stockholder is hereby granted the sole and exclusive right to sell merchandise bearing any such trade-mark and/or trade names in city of ----- and within a radius of ----- miles thereof. Said Stockholder is also to have the right to fill mail orders for any such merchandise.

3. The Stockholder agrees to pay National Modes Holding Corporation a commission upon the net invoice cost of merchandise selected by the Corporation to bear any such trade-marks or trade names purchased by the Stockholder in any fiscal year, said commission to be paid on the tenth day of each month upon invoices bearing the previous month's date as follows:

4% on purchases by the Stockholder on coats, suits, furs, underwear, bags and millinery; and dresses costing over \$10.75 each.

3% on purchases by the Stockholder on dresses costing up to and including \$10.75.

2% on all purchases of hosiery.

4. The advertising expenses of the Corporation shall be paid from a fund to be subscribed to through the payment of one percent (1%) by each stockholder of the net amount of purchases made by the Holding Corporation for the account of such stockholder.

5. The Stockholder agrees that it will not use or apply any such trade-mark or trade name in connection with any merchandise except such as may have been selected or approved by the Style Committees of the Corporation and agrees that any merchandise bearing any such trade name or trade-mark will be purchased by said Stockholder only from such sources as may be designated by the Corporation. The Stockholder will place all orders or reorders through the Corporation. The Stockholder agrees further that it will not sell through branches or otherwise any such merchandise in any locality other than the city of ----- and within a radius of ----- miles thereof, except that it may fill mail orders as aforesaid, irrespective of the territory in which any said mail orders may originate.

6. In the event that the Stockholders shall offer for sale any such merchandise below the established price, it must first remove the labels containing any such trade-mark or trade name and in such event such merchandise shall not be advertised or represented as having any connection with any of such trade-marks or trade names.

7. The Stockholder agrees that it will locally advertise and push the sale of the merchandise bearing any such trade-mark or trade name.

8. The Stockholder agrees that it will purchase a minimum amount of such merchandise, to be determined from time to time by the Executive Committee upon a basis which shall be proportioned according to the ready-to-wear volume of the Stockholder or the population of the cities in which the respective Stockholders operate.

9. This agreement shall cease to be operative if and when the Stockholder shall cease to be a Stockholder of the Corporation, except that in such event the Stockholder shall not be released from any obligations or liability theretofore incurred hereunder.

10. This agreement shall be binding upon and inure to the benefit of the successors and assigns of the Corporation and of the Stockholder; and shall be binding upon and inure to the benefit of National Modes Holding Corporation or any successor thereof so long as Mr. John Block shall own and continue to own the

majority of the capital stock thereof, and so long as he shall continue in the management thereof, and so long as said National Modes Holding Corporation, or its successors, shall engage in no enterprise except in connection with the business of National Modes, Inc.

11. The Stockholder may terminate this agreement by giving to the Corporation at least ninety (90) days' notice in writing of its intention so to do, but such cancellation shall not effect in any way any obligation of the Stockholder theretofore incurred hereunder.

IN WITNESS WHEREOF, the parties have executed this agreement the day and year first above mentioned.

NATIONAL MODES, INC.

By _____
NATIONAL MODES HOLDING-CORPORATION,

By _____
(Stockholder)

By _____

(c) The percentages of purchases to be paid as fees to the Holding Corporation, set forth in paragraph numbered 3 of the above agreement, have been changed from time to time. As originally fixed and as subsequently changed they have been paid to the Holding Corporation except as alleged in paragraph 11. Such fees are sometimes hereinafter referred to as contract service fees.

PAR. 9. (a) Beginning in 1937 and from time to time thereafter, with the consent of the Corporation and its stockholders, the Holding Corporation entered into agreements with approximately 60 retailers of women's apparel, located in the several States, not stockholders of the Corporation, under the terms and in the performance of which such retailers (herein sometimes referred to as clients) participated in and benefited from the acts and practices herein set forth in the same manner, form, and degree as buyer respondents and other stockholders of the Corporation.

(b) Said contracts provided substantially as follows:

AGREEMENT made this day between NATIONAL MODES HOLDING CORPORATION, of 130 West 31st Street, hereinafter known as the Corporation, and _____ of _____, hereinafter known as the Retailer, for the period of _____ and ending _____

1. IT IS UNDERSTOOD that the Retailer shall have the right to publicize and advertise the names of "CAROLYN" and "JEANNE BARRIE" exclusively in the city of _____ for the duration of this contract; and that the name of the Retailer will be listed in all advertisements in national publications run by the Corporation, where there is a listing of retailers' names.

2. THE RETAILER AGREES to take a minimum amount of garments per month, and his orders are herewith attached.

3. IT IS UNDERSTOOD, however, that at no time will the retailer offer for sale any garment below its agreed advertised price without first removing the

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label, and thereafter the names of "CAROLYN" or "JEANNE BARRIE" will not be mentioned in connection with the sale or advertising of such garment.

4. **THE RETAILER AGREES** to pay monthly to the Corporation 4% of the net purchase price of all garments costing up to and including \$10.75, and 5% above \$10.75, it being understood that there will be an equal percentage of savings on cost price for the Retailer, effected by the Corporation. This is to apply to all orders as well as reorders shipped to the Retailer. The Retailer agrees to place all orders and reorders through the Corporation's New York office.

5. **IT IS AGREED** that either party to this contract has the right to cancel same at any time before its expiration by giving sixty (60) days written notice by registered mail, to the other party.

6. **IT IS FURTHER AGREED** that matters contained herein, together with the attached order for merchandise; and for copies of the Corporation's mailing brochures, constitute the entire agreement between us.

NATIONAL MODES HOLDING CORPORATION,

(Retailer)

(c) The percentages of purchases to be paid as fees to the Holding Corporation, set forth in paragraph numbered 4 of the above agreement, have been changed from time to time, and were at all times substantially the same as the sum of the percentages of purchases to be paid as fees to the Holding Corporation by stockholders of the Corporation provided for in paragraph numbered 3, plus the one percent of purchases to be paid toward the cost of advertising to the Corporation provided for in paragraph numbered 4, in the agreement set forth in paragraph 8 (b). As originally fixed and as subsequently changed they have been paid to the Holding Corporation except as alleged in paragraph 11. Such fees are sometimes hereinafter referred to as contract service fees.

PAR. 10. Respondents have engaged in business pursuant to and in accordance with the contracts hereinabove set forth since the execution thereof and until the present time. In the course and conduct of such business, the Holding Corporation in the State of New York has solicited and received purchase orders for women's apparel, to bear the trade-marks and trade names owned by the Corporation, from its clients located in the several States directly from such clients and through the Corporation. The Holding Corporation has transmitted such orders to and has purchased from seller respondents and other sellers, located in the several States, the women's apparel so ordered; and such sellers have shipped and caused to be transported the women's apparel so purchased, sold, and marked from the States in which they were located into and through other States directly to the clients of the Holding Corporation.

PAR. 11. (a) Respondents engaged in one of the three following acts and practices in connection with most of such purchase and sales transactions in interstate commerce from June 19, 1936 until 1942, and thereafter and continuing until the present time in connection with fewer but many of such transactions:

(1) Seller respondents and other sellers have paid to the Holding Corporation, and the Holding Corporation has received and accepted, sums of money equal to or substantially equal to contract service fees. In some instances such payments were made by checks drawn by such sellers to the order of and sent directly to the Holding Corporation, and in other instances by checks drawn to the order of and sent directly to the Corporation, which endorsed and transmitted them to the Holding Corporation. Where such payments were thus made, the Holding Corporation waived payment of its contract service fees from clients by noting on purchase memoranda sent to them that the apparel purchased was "billed at show-room price—hence no service fee," and clients paid such sellers the full invoice price.

(2) Seller respondents and other sellers have granted to the Holding Corporation or to the Corporation, and the Holding Corporation and the Corporation have received and accepted allowances designated on their records as allowances to advertise the apparel purchased. Such allowances were granted by checks drawn by such sellers to the order of an advertising agency of the Holding Corporation and the Corporation which agency credited the sums so received to the account of or for the benefit of one or the other of said respondents. Such credits were not used by said respondents, in some instances, in whole, and in other instances, in part, to advertise the apparel purchased from the sellers making the grant; and to the extent that such credits were not used to advertise the apparel purchased from the seller making the grant, such allowances were equal to or approximately equal to and in lieu of the payments made to the Holding Corporation or the Corporation as set forth in subparagraph (a) (1) of this paragraph. Where such allowances were thus granted, the Holding Corporation waived payment of its contract service fees from clients by noting on purchase memoranda sent to them that the apparel purchased was "billed at show-room price—hence no service fee," and clients paid such sellers the full invoice price.

(3) Seller respondents and other sellers have granted to buyer respondents and other clients of the Holding Corporation, and such clients have received and accepted, discounts or allowances equal to or substantially equal to and in lieu of the payments made to the

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Holding Corporation or the Corporation as set forth in subparagraph (a) (1) of this paragraph. In some instances such discounts or allowances were shown on the face of the invoice as a percentage to be deducted from the invoice price. In other instances, they were not so shown, but, under an agreement or understanding between the Holding Corporation and such sellers, the latter invoiced clients at the gross price and the Holding Corporation informed its clients, by memoranda which showed sellers, dates, and invoice prices, that the invoice prices were to be paid "less 25 cents each overcharge," "less 12½ cents each overcharge," and similar entries. Where such discounts and allowances were thus granted, clients deducted the discount or allowance or the "overcharge" and paid sellers the lower net price, and the Holding Corporation collected its contract service fees from clients.

(b) From 1942 until the present time (during which period women's apparel was in short supply) in connection with those of such transactions in which respondents did not engage in one of the three acts and practices as set forth in subparagraph (a) above, respondents so engaged as set forth in said subparagraph except that:

(1) In some instances the amounts of such payments or grants made by seller respondents and other sellers were less than, often less than one-half of, such contract service fees; and, where such instances were transactions of the kinds set forth in subparagraphs (a) (1) and (a) (2) above, the Holding Corporation waived such contract service fees only to the extent of such payments or grants and such contract service fees were paid to the Holding Corporation by its clients to the extent that they were not waived; and, where such instances were transactions of the kind set forth in subparagraph (a) (3) above, such contract service fees were paid in full to the Holding Corporation; and

(2) In other instances seller respondents and other sellers made no such payments or grants and such contract service fees were paid in full to the Holding Corporation by its clients.

(c) In connection with all such purchase and sales transactions the Holding Corporation, the Corporation, and Respondent John Block were agents, representatives, or intermediaries acting in fact for or in behalf or subject to the direct or indirect control of buyer respondents and other clients; and such intermediary respondents were exclusively engaged in rendering and furnishing to such clients purchasing and other valuable services and facilities which promoted the resale of the apparel purchased. Such services and facilities were paid for by the payments and discounts and allowances in lieu thereof which were

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paid and granted and received and accepted as hereinabove set forth. Such payments and grants, being so used, were all transmitted to buyer respondents and other clients in the form of such services and facilities.

PAR. 12. Buyer respondent Gimbel Bros., Inc., failed and refused to enter into a stipulation as to the facts for the stated reason that it ceased being a stockholder in respondent National Modes, Inc., prior to the issuance of the complaint herein.

Seller respondents, Charles Hymen Dresses, Inc. (named in the complaint as Charles Hymen, Inc.), Henlo Sportswear, Ltd., Babs Junior, Inc., and Rubin-Feld, Inc., were legally dissolved prior to the issuance of the complaint herein.

CONCLUSION

The paying and granting of commissions, or fees, or discounts or allowances in lieu thereof, by the seller respondents to the intermediary respondents and the buyer respondents and others; the receiving and accepting thereof by the intermediary respondents and the buyer respondents and others from the seller respondents and others and the transmitting thereof by the intermediary respondents to the buyer respondents and others, in the manner and under the circumstances hereinabove found, constitute violations of subsection (c) of section 2 of the Clayton Act, as amended.

The reasons given by respondent Gimbel Bros., Inc., for its failure and refusal to enter into a stipulation as to the facts do not constitute sufficient grounds for dismissal of the complaint against that respondent in its capacity as a respondent herein by virtue of its being a member of a class consisting of past, present, and future stockholders in any of the intermediary respondents, as represented by the named buyer respondents. However, to continue this proceeding against Gimbel Bros., Inc., as a named party respondent would further extend the time in which all of the respondents might participate in the illegal practices.

The record contains no evidence in support of or in opposition to the charges that some of the respondents herein violated subsection (d) of section 2 of the Clayton Act, as amended, contained in count II of the complaint, and no findings with respect thereto have been made.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, answers of the respondents, stipulation as to the facts executed by and between Everette

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MacIntyre, Assistant Chief Trial Counsel of the Commission, and each of the respondents except Charles Hymen Dresses, Inc. (named in the complaint as Charles Hymen, Inc.), Henlo Sportswear, Ltd., Babs Junior, Inc., Rubin-Feld, Inc., and Gimbel Bros., Inc., in which it was provided, among other things, that subject to the approval of the Commission the statement of facts contained therein, which were exclusively in support of and in opposition to the charges in Count I of said complaint, may be taken as the facts in this proceeding in lieu of all testimony in support of and in opposition to the charges made in both counts of said complaint and that the Commission may proceed upon such statement of facts to make its report, stating its findings as to the facts (including inferences which may be drawn from said stipulated facts) and its conclusion based thereon, and enter its order disposing of this proceeding, without the presentation of arguments or the filing of briefs; and the Commission having approved each said stipulation as to the facts and having made its findings as to the facts and its conclusion that the respondents have violated the provisions of subsection (c) 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 an act of Congress approved June 19, 1936 (the Robinson-Patman Act):

(1) *It is ordered*, That the seller respondents Hyman Schreier and Ethel Schreier, individually and partners trading as H. Schreier Co., or trading under any other name, and their respective agents, representatives, and employees, and Junior Deb Coat & Suit Co., Inc., Eclipse Knitting Mills, Inc., Morris W. Haft & Bros., Inc., Grossman & Spiegel, Inc., Junior Guild Frocks, Inc., Godett & Gross, Inc., Henry Rosenfeld, Inc., Fred Perlberg, Inc., Shelton Coat Corp., and Shipman & Baker, Inc., corporations, and their respective officers, directors, agents, representatives, and employees, directly or through any corporate or other device, in or in connection with the sale of women's wearing apparel and accessories, or other merchandise, in commerce as "commerce" is defined in the Clayton Act, do forthwith cease and desist from:

Paying or granting to any buyer, or to any agent, representative, or other intermediary acting for or in behalf, or subject to the direct or indirect control of any such buyer, anything of value as a commission, brokerage, or other compensation, or any allowance or discount in lieu thereof, on sales for such buyer's own account.

(2) *It is further ordered*, That the intermediary respondents National Modes, Inc., National Modes Holding Corp., corporations, their

officers, directors, agents, representatives, and employees, and John Block, individually, and his agents, representatives, and employees, directly or through any corporate or other device, in or in connection with the purchase of women's wearing apparel and accessories, or other merchandise, in commerce as "commerce" is defined in the Clayton Act, do forthwith cease and desist from:

Receiving or accepting, directly or indirectly, from any seller anything of value as a commission, brokerage, or other compensation, or any allowance or discount in lieu thereof, upon any purchase in connection with which such intermediary respondent acts for, or in behalf, or subject to the direct or indirect control of the buyer.

(b) Transmitting, paying, or granting, directly or indirectly, in the form of money or credits or in the form of services or benefits provided or furnished, or otherwise, to any buyer any commission, brokerage, or other compensation, or any allowance or discount in lieu thereof, received on such buyer's purchases.

(3) *It is further ordered*, That the buyer respondents Arnold Constable & Co., Auerbach Co., Best's Apparel, Inc., Fowler, Dick & Walker, Hale Bros. Stores, Inc., A. Harris & Co., The Hecht Co., Popular Dry Goods Co., Ames & Brownley, Inc., Dalton Co., King's Inc., and Ogus, Rabinovich & Ogus, Inc., corporations, their respective officers, directors, agents, representatives, and employees, and J. W. Scarbrough and L. Scarbrough, individually and partners trading as E. M. Scarbrough & Sons, or trading under any other name, their agents, representatives, and employees, and all other past, present, or future stockholders in any of the intermediary respondents named in paragraph (2) hereof, and their officers, directors, agents, representatives, and employees, directly or through any corporate or other device, in or in connection with the purchase of women's wearing apparel and accessories, or other merchandise, in commerce as "commerce" is defined in the Clayton Act., do forthwith cease and desist from:

Receiving or accepting from any seller, or from any agent, representative, or other intermediary acting for or in behalf or subject to the direct or indirect control of said buyer respondents, in the form of money or credits or in the form of services or benefits provided or furnished, or otherwise, any commission, brokerage, or other compensation, or allowance or discount in lieu thereof, upon purchases for their own accounts.

(4) *It is further ordered*, That the complaint herein as to Charles Hymen Dresses, Inc. (named in the complaint as Charles Hymen, Inc.),

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Henlo Sportswear, Ltd., Babs Junior, Inc., and Rubin-Feld, Inc., be, and the same hereby is, dismissed.

(5) *It is further ordered*, That the complaint herein as to Gimbel Bros., Inc., a corporation, in its capacity as a named party respondent herein (but not in its capacity as a respondent herein by virtue of its being a member of a class consisting of past, present, and future stockholders in any of the intermediary respondents named in paragraph (2) hereof, which class is represented by the buyer respondents named in paragraph (3) hereof), be, and the same hereby is, dismissed without prejudice to the right of the Commission to institute such further proceedings as may be warranted by the facts.

(6) *It is further ordered*, That the charges in count II of the complaint herein be, and the same hereby are, dismissed.

(7) *It is further ordered*, That each of the respondents herein except those as to whom the complaint is dismissed, shall, within 60 days after service upon it of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which it has complied with this order.

Syllabus

IN THE MATTER OF

THE LARSEN COMPANY ET AL.

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATIONS OF SUBSEC. (c) OF SEC. 2 OF AN ACT OF CONGRESS APPROVED OCTOBER 15, 1914, AS AMENDED BY AN ACT APPROVED JUNE 19, 1936

Docket 5623. Complaint, Nov. 26, 1948—Decision, Feb. 6, 1950

In a proceeding in which it was alleged that respondents paid commissions or allowances upon or in connection with sales made to buyers for their own accounts, and in which it appeared that the sellers made use of so-called consignment contracts or agreements under which the consignee or purchaser made advances, usually 80 percent of the purchase price, upon receipt of the products or within 10 days thereafter, and paid the balance due after he resold it, said purchaser's use of said so-called consignment contract or agreement obviously did not change the real nature of the transaction involved.

Where a corporation engaged in packing, canning, and selling canned fruits and vegetables to buyers in various sections of the United States and the Territory of Hawaii, and two officers thereof and substantial stockholders, who exercised a substantial degree of authority and control over its business; distributing and selling some of their products under their own brands and labels, or those of the particular buyer concerned, through intermediaries or brokers who acted as their agents in negotiating the sale thereof, and were compensated by their brokerage fees or commissions, and were not traders for profit and had no further financial interest in the products sold—

Paid also, directly or indirectly, commissions or brokerage fees on substantial sales of its said products—either unlabeled or under the buyers' labels or brands—directly to buyers who purchased in their own names and for their own accounts, and made use, in said connection, of so-called consignment contracts or agreements under which the food products were purportedly consigned to the particular purchaser, and advances, usually 80 percent of the purchase price, were made to said sellers by said purchaser upon receipt thereof or within 10 days thereafter, and balance due was paid after purchaser's resale thereof:

Held, That the paying and granting of such commissions or brokerage fees to purchasers of food products on purchases for their own accounts, as above set forth, constituted violations of subsection (c) of section 2 of the Clayton Act as amended.

In said proceeding in which it appeared that two other officers, namely, the vice president and the treasurer of said corporation, had also been joined as respondents, but did not, as alleged in the complaint, exercise a substantial degree of authority and control over its distribution and sales policies: the Commission was of the view that the complaint should be dismissed as to said individuals.

Mr. Cecil G. Miles for the Commission.

Covington, Burling, Rublee & Shorb, of Washington, D. C., for respondent.