

Complaint

IN THE MATTER OF

JONATHAN LOGAN, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF SEC. 2 (d)
OF THE CLAYTON ACT AS AMENDED

Docket 6215. Complaint, June 22, 1954—Decision, May 29, 1955

Consent order requiring a dress manufacturer, with main office in Jersey City, N. J., and sales and show room in New York City, to cease making payments for promotional services to some customers—specifically to Best & Company for “reciprocal advertising” as charged—without making similar payments available to all their competitors, in violation of sec. 2(d) of the Clayton Act as amended.

Before *Mr. J. Earl Cox*, hearing examiner.

Mr. Peter J. Dias and *Mr. Richard E. Ely* for the Commission.

Phillips, Nizer, Benjamin & Krim, 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, 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, 1936, hereby issues its complaint stating its charges with respect thereto as follows:

PARAGRAPH 1. Respondent Jonathan Logan, Inc., is a corporation, organized, existing and doing business under and by virtue of the laws of the State of New York, with its main office and principal place of business located at 83 Newark Avenue, Jersey City, New Jersey and a sales and showroom at 1407 Broadway, New York City, New York.

Respondent is now and for some years past has been engaged in the manufacture, sale and distribution of dresses. Said products are sold for resale at retail to many customers, with places of business located in many cities and towns throughout the United States, such as department stores, women's specialty shops and dress shops. All of said products are sold under the trade name “JONATHAN LOGAN” and gross sales are substantial having exceeded \$9,000,000 in each of the years 1949 and 1950. “JONATHAN LOGAN” dresses have been widely advertised and otherwise publicized to create a consumer demand therefor, and they are well known to purchasers of dresses buying for resale at retail.

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At some of the times mentioned herein "JONATHAN LOGAN" dresses were manufactured and sold by partnerships and corporations other than Jonathan Logan, Inc., including David Schwartz & Co., a partnership, and David Schwartz Dress Co., Inc., a corporation.

PAR. 2. Respondent David Schwartz is an individual with his principal office and place of business located at 83 Newark Avenue, Jersey City, New Jersey. Said respondent is now and has been president of Jonathan Logan, Inc., and he controls, directs and is responsible for the acts and practices of said corporate respondent. He also controlled, directed and was responsible for the acts and practices of the partnerships and corporations referred to in Paragraph One.

PAR. 3. In the course and conduct of their business, respondents engaged in commerce as commerce is defined in the Clayton Act, as amended, having shipped their products or caused them to be transported from their main place of business in the State of New Jersey to customers located in the same and in other States of the United States and the District of Columbia.

PAR. 4. In the course and conduct of their business in commerce, respondents paid or contracted for the payment of something of value to or for the benefit of some of their customers as compensation or in consideration for services or facilities furnished by or through such customers in connection with their offering for sale or sale of products sold to them by said respondents, and such payments were not available on proportionally equal terms to all other customers competing in the distribution of their products.

PAR. 5. Included among the payments alleged in Paragraph 4, were credits or sums of money, by way of discounts, allowances, rebates or deductions and advertising services, as compensation or in consideration for promotional services or facilities furnished by customers in connection with offering for sale or sale of "JONATHAN LOGAN" products, including advertising in various forms, sometimes herein-after referred to as promotional allowances.

The respondents did not make such allowances available on proportionally equal terms to all customers competing in the distribution of Jonathan Logan products, in that said respondents made, or offered to make, such allowances to some of such competing customers but did not make, or offer to make or otherwise make available, such allowances in any amount on any terms to all other of such competing customers.

PAR. 6. The payment of advertising services, as alleged in Paragraph 5, was made in consideration for promotional services or facilities furnished by Best & Company of New York City pursuant to an agreement dated February 20, 1948 which provided that:

Commencing May 1st, 1948, in consideration of Best & Co., Inc. agreeing to advertise once each month in a Sunday newspaper, mentioning Jonathan Logan's name in the ad, Jonathan Logan agrees to give Best & Co., credit in its national magazine advertising in publications such as Charm, Seventeen, Mademoiselle and Glamour.

Jonathan Logan further agrees that they will not allow any other store in metropolitan New York to advertise Jonathan Logan dresses. Our New York accounts will be informed of this change in policy. It is understood, however, that if there should be an ad by one of the stores in the metropolitan district in which the Jonathan Logan name is used, it will be something beyond our control as we do not have complete supervision over the merchandising policies of the stores.

This agreement is to continue for one year from May 1st, 1948 and either party may have the privilege of cancelling same on three months notice in writing.

This arrangement will be considered in effect upon receipt of your letter of acknowledgment.

(signed) DAVID SCHWARTZ,
JONATHAN LOGAN, INC.

Respondents and Best & Company have expended large sums of money in publishing advertisements pursuant to said agreement, which has continued in effect since May 1, 1948, and as a result both have realized great sales volume. For example, during the period from July 1949 to December 1950, Best & Company spent approximately \$15,000 and respondents spent approximately \$137,000 in reciprocal advertising. Sales, during the same period, of Jonathan Logan dresses to Best & Company amounted to approximately \$360,000.

PAR. 7. Best & Company does a large mail order business and all advertisements whether placed by Best & Company or by the respondents bear a legend inviting the public to order Jonathan Logan dresses by mail from Best & Company, 5th Avenue, New York City, New York.

In addition to its main store located on 5th Avenue, New York City, Best & Company maintains fifteen branches variously located in suburban New York City and Long Island as well as in ten cities located in seven other States and the District of Columbia. In each of said cities and the District of Columbia, Best & Company competes with numerous other customers of respondents in the sale or offering for sale of Jonathan Logan dresses and respondents failed to make or offer or otherwise make available any promotional allowances in any amount on any terms to many of such other customers.

PAR. 8. The acts and practices of respondents as alleged above violate subsection (d) of Section 2 of the Clayton Act, as amended by the Robinson-Patman Act. (U. S. C. Title 15, sec. 13.)

DECISION OF THE COMMISSION

Pursuant to Rule XXII of the Commission's Rules of Practice, and as set forth in the Commission's "Decision of the Commission and Order to File Report of Compliance", dated May 29, 1955, the initial decision in the instant matter of hearing examiner J. Earl Cox, as set out as follows, became on that date the decision of the Commission.

INITIAL DECISION BY J. EARL COX, HEARING EXAMINER

The charges contained in the complaint in this proceeding are that Jonathan Logan, Inc., a New York corporation with places of business at 150 Bay Street (formerly 83 Newark Avenue), Jersey City, New Jersey, and at 1407 Broadway, New York City, New York, and David Schwartz, individually and as president of said corporation, have violated subsection (d) of Section 2 of the Clayton Act as amended by the Robinson-Patman Act, by making or contracting to make payments to some customers for services or facilities, particularly advertising services, furnished by or through such customers in connection with the handling or reselling of respondents' products, without offering such payments or contracts to all competing customers on a proportionally equal basis.

Following issuance and service of the complaint, respondents on October 18, 1954, filed with the Commission their answer to such complaint. Thereafter, on April 5, 1955, respondents entered into a Stipulation For Consent Order with counsel supporting the complaint, which was approved by the Director and Assistant Director of the Bureau of Litigation and transmitted to the Hearing Examiner.

This stipulation provides, among other things, that respondents admit all the jurisdictional allegations set forth in the complaint and that the record herein may be taken as if the Commission had made findings of jurisdictional facts in accordance with such allegations; that the stipulation, together with the complaint, shall constitute the entire record herein; that the complaint may be used in construing the order agreed upon, which may be altered, modified or set aside in the manner provided by the statute for orders of the Commission; that the signing of the stipulation is for settlement purposes only and does not constitute an admission by respondents that they have violated the law as alleged in the complaint; and that the order provided for in the stipulation and hereinafter included in this decision shall have the same force and effect as if made after a full hearing, presentation of evidence and findings and conclusions thereon.

All parties request that the answer hereinbefore filed be withdrawn, and expressly waive the filing of answer, hearing before a hearing examiner or the Commission, the making of findings of fact or conclusions of law by the hearing examiner or the Commission, the filing of exceptions, oral argument before the Commission, and all further and other procedure before the hearing examiner and the Commission to which respondents may be entitled under the Clayton Act as amended or the Rules of Practice of the Commission, including any and all right, power or privilege to challenge or contest the validity of the order entered in accordance with the stipulation.

The order agreed upon disposes of all the issues raised in the complaint, without differing materially from the order contained in the notice accompanying the complaint. The Stipulation For Consent Order is therefore accepted; the request of all parties for the withdrawal of respondents' answer previously filed herein is granted; this proceeding is found to be in the public interest, and the following order is issued:

It is ordered, That Respondents, Jonathan Logan, Inc., a corporation, its officers, employees, agents and representatives, and David Schwartz, individually and as President of Jonathan Logan, Inc., directly or through any corporate or other device, in or in connection with the sale of dresses in commerce, as "commerce" is defined in the aforesaid Clayton Act, as amended, do forthwith cease and desist from making or contracting to make, to or for the benefit of any customer, any payment of anything of value as compensation or in consideration for any services or facilities furnished by or through such customer in connection with his processing, handling, sale or offering for sale of products sold to him by Respondents, unless such payment or consideration is available on proportionally equal terms to all other customers competing in the distribution of such products.

It is further ordered, That Respondents' answer to the complaint herein, filed with the Commission on October 18, 1954, be, and the same hereby is, withdrawn from the record of this proceeding.

ORDER TO FILE REPORT OF COMPLIANCE

It is ordered, That respondents Jonathan Logan, Inc., a corporation, and David Schwartz, individually and as President of said corporation, shall, within sixty (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 the order to cease and desist [as required by said declaratory decision and order of May 29, 1955].

The Commission on January 21, 1955 denied respondents' motion to dismiss complaint because of abandonment of illegal practices, certified to the Commission by the hearing examiner, and remanded the matter for further proceedings.

This matter having come on to be heard upon the motion to dismiss filed on October 26, 1954, by counsel for respondents, which motion, together with the answer in opposition thereto filed by counsel supporting the complaint and the record, was certified to the Commission for its consideration under the hearing examiner's ruling of November 10, 1954; and

The Commission, for reasons stated in its accompanying opinion, having determined that the respondents' motion should be denied:

It is ordered, That the respondents' motion to dismiss the complaint be, and it hereby is, denied.

It is further ordered, That the case be remanded to the hearing examiner for further proceedings.

OPINION OF THE COMMISSION

By GWYNNE, Commissioner:

The motion by respondents to dismiss the complaint, together with other papers, has been certified to the Commission by the hearing examiner.

The complaint, which was served on June 28, 1954, charges a violation of Section 2 (d) of the Clayton Act in that respondents furnished services or facilities to certain customers which were not available on proportionally equal terms to all other competing customers. In particular, the complaint charged furnishing of such service to Best & Company, New York City, in accordance with the following:

"Commencing May 1st, 1948, in consideration of Best & Co., Inc., agreeing to advertise once each month in a Sunday newspaper, mentioning Jonathan Logan's name in the ad, Jonathan Logan agrees to give Best & Co., credit in its national magazine advertising in publications such as Charm, Seventeen, Mademoiselle and Glamour.

"Jonathan Logan further agrees that they will not allow any other store in metropolitan New York to advertise Jonathan Logan dresses. Our New York accounts will be informed of this change in policy. It is understood, however, that if there should be an ad by one of the stores in the metropolitan district in which the Jonathan Logan name is used, it will be something beyond our control as we do not have complete supervision over the merchandising policies of the stores.

"This agreement is to continue for one year from May 1st, 1948 and

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either party may have the privilege of cancelling same on three months' notice in writing.

"This arrangement will be considered in effect upon receipt of your letter of acknowledgment.

"(signed) DAVID SCHWARTZ,

"JONATHAN LOGAN, INC."

The answer filed October 18, 1954 denies most of the material allegations of the complaint but admits the signing and delivery of the letter above referred to. The answer also alleges that the arrangements set forth in the letter had been terminated on or before May 1, 1954.

On October 26, 1954, respondents filed with the hearing examiner a motion to dismiss supported by the affidavit of David Schwartz, President of Jonathan Logan, Inc. The affidavit sets out that the arrangement with Best & Company had been terminated for business reasons prior to any claim of illegality being made by the Federal Trade Commission and that "the respondents will not engage in any of the acts and practices complained of in the complaint, so long as such acts and practices constitute a violation of law."

Counsel supporting the complaint filed objection with the hearing examiner to dismissal and, on December 3, 1954, filed a supplemental answer in opposition in which is set out a letter from respondents to Best & Co., dated April 26, 1954, a material part of which is:

"MR. PHILIP LeBOUITILLIER,

"*Best & Company*

"*Fifth Avenue, New York, New York.*

"DEAR MR. LeBOUITILLIER:

* * * * *

We have been subjected to great pressure from other primary department stores handling our merchandise who have sought to publicize our name in their advertising. These pressures have mounted over the years, and in recent months have been especially pronounced. At the same time your organization has been running ads in conjunction with other dress and sportswear manufacturers so that it is not uncommon to find several Best advertisements containing prominent reference to manufacturing resources in almost any edition of the New York Sunday Times. We have brought this situation to the attention of your representatives on several occasions and most recently in my letter of April 2, 1954 to your Mr. Gordon McCausland. *We find it necessary, therefore, in limited instances to permit the use of our trade name in advertising copy.*

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"We look forward to a continuation of our business relationship, and in so doing we will try to appropriate as much money as we have in the past for joint exploitation of your name and ours. We will continue to serve you to the best of our ability as we always have.

"Mindful of your absence from the City at this time, we have refused to permit the use of our name in any advertisements in New York City until after May 1, 1954.

"Sincerely,

"JONATHAN LOGAN, INC.

"(S) DAVID SCHWARTZ."

[Emphasis added.]

Counsel also claims that Jonathan Logan ads appeared in the magazine section of the New York Sunday Times after May 1st and as late as October 17, 1954, and in the June, September, and October issues of the magazine "Seventeen." Each of these ads contains promotional features in behalf of Best & Company. He also claims that ads of Best & Company as late as July contain promotional features in behalf of respondents.

In Argus Cameras, Inc., Docket No. 6199, it is pointed out that the dismissal of a complaint because of discontinuance of the practices complained of is not the usual procedure. All the elements necessary for a dismissal were found to exist in that case. There was no dispute about the facts.

In the present case, there is a substantial dispute between counsel supporting the complaint and counsel for the respondents as to the abandonment of the illegal practices and as to the likelihood of their being resumed in the future. From the facts disclosed, we cannot determine whether allowances presently being made by respondents are available to all competing customers on proportionally equal terms.

Respondents' motion to dismiss the complaint is therefore denied and the case is remanded to the hearing examiner for further proceedings in accordance therewith.

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IN THE MATTER OF

ISAAC REISS DOING BUSINESS AS GRAND
MANUFACTURING COMPANY

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT

Docket 6293. Complaint, Feb. 18, 1955—Decision, June 2, 1955

Consent order requiring a seller to wholesalers and dealers from his place of business in New York City, to cease representing falsely by attached tags and insignia that his Armed Forces-type jackets and outer coats were manufactured according to specifications for the U. S. Armed Forces, and to cease representing falsely by use of his trade name and otherwise that he was a manufacturer.

Before *Mr. John Lewis*, hearing examiner.

Mr. Terral A. Jordan for the Commission.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Isaac Reiss, an individual trading as Grand Manufacturing Company, hereinafter referred to as respondent, has violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Isaac Reiss is an individual trading and doing business as a sole proprietorship under the name of Grand Manufacturing Company with his office and principal place of business located at 330 Grand Street, New York 2, New York.

PAR. 2. Respondent is now and for more than two years last past has been engaged in the sale and distribution of jackets and outer coats to wholesalers and dealers, in commerce, among and between the various States of the United States and the District of Columbia. Respondent maintains and at all times mentioned herein has maintained, a substantial course of trade in said garments, in commerce among and between the various States of the United States.

PAR. 3. The garments sold and distributed by respondent in the course and conduct of his business as aforesaid closely resemble the jackets and outer coats issued and furnished to members of the United States Armed Forces in color, pattern and style. Respondent also