

Complaint

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IN THE MATTER OF

E. J. KORVETTE, INC., ET AL.

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

Docket 8276. Complaint, Jan. 16, 1961—Decisions, Oct. 24, 1961

Identical orders consented to by a New York City department store chain, three men's retail clothing stores in California, and six New York City men's clothing manufacturers, and issued in default against four New York City men's clothing manufacturers, requiring them to cease engaging in a common course of action under which said chain arranged for the manufacturers to sew labels of the three fashionable California men's retail clothing stores into garments it purchased direct from the manufacturers and then falsely advertised the merchandise as previously stocked and offered for sale by the three retailers at stated "Original Prices" and the difference between those amounts and advertised lower prices as constituting a saving to purchasers; and

Further consent order requiring said chain to cease misrepresenting the sources, history, prices, and savings afforded purchasers of men's wearing apparel it sold under the above-described plan or otherwise.

COMPLAINT

The Federal Trade Commission, having reason to believe that the party respondents named in the caption hereof and hereinafter more particularly designated and described, have violated the provisions of Section 5 of the Federal Trade Commission Act (U.S.C. Title 15, Section 45) and it appearing to the Commission that a proceeding by it in respect thereof would be to the interest of the public, hereby issues its complaint pursuant to its authority thereunder and charging as follows:

PARAGRAPH 1. Respondent E. J. Korvette, Inc., hereinafter referred to as respondent Korvette, is a corporation organized and existing under the laws of the State of New York, with its principal office and place of business located at 12 East 46th Street, New York, New York.

Respondent Korvette is now, and at all times material hereto has been, engaged in the business of operating a chain of department stores selling to the public various types of goods, wares and merchandise, including men's wearing apparel such as suits, topcoats, sport coats, slacks, dress and sport shirts, ties and sweaters (said men's wearing apparel is hereinafter referred to as apparel merchandise) in competition with other corporations, firms and individuals also engaged in selling to the public goods, wares and apparel merchandise of the same nature. Respondent Korvette, directly or through sub-

sidiaries, owns and operates department stores in the States of New York, New Jersey, Pennsylvania and Connecticut.

In the course and conduct of its business, respondent Korvette now causes, and for some time last past has caused, goods, wares and apparel merchandise to be shipped from various manufacturers and sellers thereof in the several States of the United States to its department stores located in States other than the State where such shipments originate. Respondent Korvette, through its department stores, in some instances, has been and is now engaged in the sale of goods, wares and apparel merchandise to purchasers thereof located in States other than the State where the Korvette department store making the sale of the goods, wares and apparel merchandise is located. In such instances, respondent Korvette causes said goods, wares and apparel merchandise to be shipped and transported across State lines. Said respondent is and has been engaged in commerce, as "commerce" is defined in the Federal Trade Commission Act.

In addition, respondent Korvette has been, and is now, engaged in disseminating and in causing to be disseminated in newspapers of interstate circulation, advertisements designed and intended to induce sales of its goods, wares and apparel merchandise. The amount expended by respondent Korvette upon such advertising has been and is now in excess of one million dollars annually.

PAR. 2. The respondents named in this Paragraph Two will sometimes hereinafter be referred to as "respondent retailers."

(a) Respondent Richel, Inc., doing business as Gus S. May, is a corporation organized and existing under the laws of the State of California, with its principal office and place of business located at 9878 Wilshire Boulevard, Beverly Hill, California.

(b) Respondent Ray Blumenthal, Jr., is an individual doing business as Ray's Shop for Men, with his office and principal place of business located at 222 North Palm Canyon Drive, Palm Springs, California.

(c) Respondent Monte Factor, Ltd., is a corporation organized and existing under the laws of the State of California, with its principal office and place of business located at 270 North Beverly Drive, Beverly Hills, California.

The respondent retailers named above in this Paragraph Two are now, and at all times material hereto have been engaged in the business of operating well-known retail establishments selling a line of high-priced men's clothing and furnishings and catering to vacationers, celebrities and others at Beverly Hills or Palm Springs, California or Las Vegas, Nevada. In 1959, each of these respondent retailers sold and shipped across State lines in interstate commerce a quantity of apparel merchandise and labels from each of their respective retail

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establishments in Beverly Hills or Palm Springs to respondent Korvette in New York, New York.

PAR. 3. The respondents named in this Paragraph Three will sometimes hereinafter be referred to collectively as "respondent manufacturers".

(a) Respondent Bank Street Clothes, Inc., is a corporation organized and existing under the laws of the State of New York, with its principal office and place of business located at 162 Fifth Avenue, New York, New York.

(b) Respondent Blacker Bros., Inc., is a corporation organized and existing under the laws of the State of New York, with its principal office and place of business located at 53 West 23rd Street, New York, New York.

(c) Respondent Al Meirow is an individual doing business as Al Meirow, with his office and principal place of business located at 133 Fifth Avenue, New York, New York.

(d) Respondent Kasinoff-Herman, Inc., is a corporation organized and existing under the laws of the State of New York, with its principal office and place of business located at 80 Fifth Avenue, New York, New York.

(e) Respondent Townsman Clothes, Inc., is a corporation organized and existing under the laws of the State of New York, with its principal office and place of business located at 120 Fifth Avenue, New York, New York.

(f) Respondent Leslie Lloyds Clothes, Incorporated, is a corporation organized and existing under the laws of the State of New York, with its principal office and place of business located at 73 Fifth Avenue, New York, New York.

(g) Respondent Damon Creations, Inc., is a corporation organized and existing under the laws of the State of New York, with its principal office and place of business located at 16 East 34th Street, New York, New York.

(h) Respondents David Rappaport and Emanuel Rappaport are co-partners doing business as Lord Stuart Company, with their principal office and place of business located at 16 East 34th Street, New York, New York.

(i) Respondent Atlantic Shirt Co., Inc., is a corporation organized and existing under the laws of the State of New York, with its principal office and place of business located at 1235 Broadway, New York, New York.

(j) Respondent Lido Shirt Corporation is a corporation organized and existing under the laws of the State of New York, with its principal office and place of business located at 915 Broadway, New York, New York.

The respondent manufacturers named above in this Paragraph Three are now, and at all time materials hereto have been, engaged in the business of manufacturing and selling, or in selling and distributing, apparel merchandise, consisting of either one or more of the following items, men's suits, top coats, sport coats, slacks, dress shirts, sport shirts, ties and sweaters, to retailers and jobbers located in various parts of the United States. In the course and conduct of their respective businesses, each of said respondent manufacturers has shipped, and now ships, one or more of the above named items of apparel merchandise from its place of business in the State of New York to purchasers located in other States and maintain a course of trade in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In 1959, through a series of transactions in interstate commerce, as hereinafter alleged, respondent Korvette, respondent retailers and respondent manufacturers entered into an understanding, agreement, combination and conspiracy between and among themselves to pursue, and they did pursue a planned common course of action between and among themselves to deceive and mislead the purchasing public or cause the purchasing public to be deceived and misled, through false and deceptive advertising and misrepresentations in connection with respondent Korvette's purchasing, advertising, offering for sale and selling of a substantial quantity of apparel merchandise, consisting of but not limited to men's suits, top coats, sport coats, slacks (trousers), dress and sport shirts, ties and sweaters.

Pursuant to said understanding, agreement, combination, conspiracy and planned common course of action, and in furtherance thereof, respondent Korvette, respondent retailers and respondent manufacturers acted in concert and in cooperation in doing and performing the following methods, acts and practices:

(a) Respondent Korvette entered into separate understandings and agreements with respondent retailers to purchase a quantity of apparel merchandise from each respondent retailer with respondent Korvette being authorized by the respondent retailer to publicize said purchase and to advertise and sell said apparel merchandise with the respective respondent retailer's label and trade name affixed to the apparel merchandise purchased from the particular respondent retailer.

(b) Respondent Korvette in addition entered into other separate understandings and agreements with the respondent retailers which purported to sell, assign and transfer to respondent Korvette certain purchase orders or purchase commitments for apparel merchandise

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which each respondent retailer had purportedly previously placed with the respondent manufacturers and other men's clothing manufacturers. Pursuant to these understandings and agreements, the said manufacturers were purportedly authorized to deliver to respondent Korvette apparel merchandise that had been previously purchased by the respective respondent retailers, and respondent Korvette was authorized to advertise and sell said purportedly assigned apparel merchandise with the labels and trade names of the respective respondent retailers affixed thereto.

(c) Subsequent to entering into the understandings and agreements referred to and described in subparagraph (b) of this Paragraph Four, respondent Korvette entered into separate understandings and agreements with each of the respondent manufacturers to purchase, and it did purchase, substantial quantities of apparel merchandise with labels affixed thereto bearing the trade names of the respective respondent retailers. Pursuant to said understandings and agreements with the respondent manufacturers, respondent Korvette selected the types, styles, sizes and quantities of apparel merchandise which would be purchased from each respondent manufacturer, and respondent Korvette furnished, or caused the respondent manufacturers to be furnished, with labels of each of the respondent retailers for sewing onto the apparel merchandise purchased.

(d) Following the making of the understandings and agreements referred to and described in the foregoing subparagraphs of this Paragraph Four, respondent Korvette made the following typical, but not all inclusive, statements in a series of advertisements appearing in newspapers circulated in interstate commerce:

(1)

Only At Korvette's
Gus S. May the Finest Men's Apparel from the
Exclusive Beverly Hilton, Beverly Hills Calif.
Sale! Men's Luxury Wear

Gus S. May
of the Beverly Hilton, Beverly Hills Calif.
Hand-Tailored Suits
\$46 \$56
Gus S. May Original Prices
\$95 to \$135

Gus S. May
of the Beverly Hilton
Men's Deluxe Sport Jackets
Gus S. May Original Prices \$55-\$75
\$21.97 \$29.97

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(2)

From Palm Springs California
 Millionaire's Menswear Sale!
 You See The Original Labels and Price Tickets
 From Exclusive RAY'S OF PALM SPRINGS!
 You Get This Luxury Apparel at
 Sensational Korvette Savings!

RAY'S
 of Palm Springs, California
 Men's Hand Tailored Suits
 Ray's Original Prices \$95 to \$135
 \$46 — \$56

RAY'S of Palm Springs
 Men's Luxurious Dress Shirts
 Ray's Original Prices 8.95 to 12.95
 3.99 — 5.99

(3)

From Beverly Hill's! From Las Vegas!
 Glamour Sports of the World Where Movie Stars Shop!
 Monte Factor Men's Wear
 Only at E. J. Korvette

Men's Hand Tailored Suits
 Monte Factor Ltd. Original Prices \$95-\$135
 \$46 — \$56

Monte Factor Ltd.
 of the Stardust—Las Vegas
 Men's Long Sleeve Sport Shirts
 Monte Factor Ltd. Original Prices 6.95-10.95
 3.99 — 5.99

PAR. 5. Through the use of the aforesaid statements, and others similar thereto not included herein, respondent Korvette represented that:

(1) The stock of apparel merchandise advertised and offered for sale with the respective respondent retailer's labels and price tickets affixed thereto was apparel merchandise which had been previously stocked and offered for sale by the respective respondent retailers and which had been purchased from each of the respondent retailers by respondent Korvette.

(2) The amounts designated as the "Original Prices" of the respective respondent retailers were the prices at which the apparel merchandise had been sold at retail by each of the respondent retailers in the recent, regular course of their respective businesses.

(3) The purchasers of the apparel merchandise with the respective respondent retailer's labels and price tickets affixed thereto were afforded savings equal to the differences between the higher and lower prices listed in said statements.

PAR. 6. Said statements and representations by respondent Korvette were false, misleading and deceptive. In truth and in fact:

(1) Except for a small quantity of apparel merchandise which was purchased and obtained directly from each respondent retailer, all of the apparel merchandise advertised and offered for sale by respondent Korvette, with the labels and price tickets of the respective respondent retailers affixed thereto, was apparel merchandise which respondent Korvette purchased directly from the respondent manufacturers who sewed and affixed the labels of the respective respondent retailers to said apparel merchandise in accordance with the instructions and directions of respondent Korvette.

(2) Except for the small quantity of apparel merchandise which was purchased and obtained directly from each respondent retailer, the apparel merchandise advertised and offered for sale by respondent Korvette with the labels and price tickets of the respondent retailers affixed thereto was apparel merchandise which had never been stocked and offered for sale by any of the respondent retailers and, consequently, the amounts designated as the "Original Prices" of the respective respondent retailers were never applicable to said apparel merchandise.

(3) The purchasers of the apparel merchandise with the respective respondent retailer's labels and price tickets affixed thereto were not afforded savings equal to the differences between the higher and lower prices listed in said statements.

PAR. 7. All of the respondents were or are in substantial competition, in commerce, with other corporations, firms, and individuals engaged in the sale of apparel merchandise of the same general nature as that sold by respondents.

PAR. 8. The understanding, agreement, combination, conspiracy and planned common course of action in interstate commerce, and the methods, acts and practices of the respondents, as hereinbefore alleged, were designed and perpetrated to form some tenable basis for respondent Korvette using the aforesaid false, misleading and deceptive statements and representations in newspaper advertisements and to increase substantially the sales of apparel merchandise by all of the respondents to the detriment of competition. The use by respondent Korvette of the aforesaid false, misleading and deceptive statements and representations had the capacity and tendency to mislead and deceive members of the purchasing public into the erroneous and mistaken belief that the said statements and representations were true and into the purchase of substantial quantities of respondent Korvette's apparel merchandise because of such mistaken and erroneous belief. As a result of the aforesaid understanding, agreement, combination, conspiracy and planned common course of action and the

methods, acts and practices between and among all of the respondents herein and as a result of respondent Korvette's use of the aforesaid false, misleading and deceptive statements in newspaper advertising, substantial trade in commerce has been unfairly diverted to the respondent manufacturers and respondent Korvette from their competitors and substantial injury has thereby been done to competition in commerce.

PAR. 9. The aforesaid acts and practices of the respondents, as herein alleged, were, and are, all to the injury and prejudice of the public and of the respondents' competitors and constituted, and now constitute, unfair and deceptive acts and practices and unfair methods of competition, in commerce, within the intent and meaning of the Federal Trade Commission Act.

Mr. William J. Boyd, Jr., supporting the complaint.

Simpson, Thacher & Bartlett, of New York, N.Y., for respondent Korvette;

Mr. Abraham Gottfried, of Beverly Hills, Calif., for respondent Richel;

Simon, Simon & Cleary, of Palm Springs, Calif., and *Mr. Harry Levin*, of Washington, D.C., for respondent Blumenthal;

Aaronson & Weil, of Beverly Hills, Calif., for respondent Factor; Respondent Bank Street, *pro se*;

Mr. Simon F. Gross, of New York, N.Y., for respondent Meirow;

Lopin & Jacobson, of New York, N.Y., for respondents Damon Creations, and *Messrs. David and Emanuel Rappaport*;

Rabbino & Ribbino, of New York, N.Y., for respondent Atlantic Shirt;

Mr. Alfred Norick, of New York, N.Y., for respondent Lido Shirt.

INITIAL DECISION AS TO CERTAIN RESPONDENTS BY JOHN LEWIS, HEARING EXAMINER

The Federal Trade Commission issued its complaint against the above-named respondents on January 16, 1961, charging them with the use of unfair and deceptive acts and practices and unfair methods of competition, in commerce, in violation of the Federal Trade Commission Act, by entering into a combination or conspiracy to deceive and mislead the purchasing public as to the sources, prices and savings of apparel merchandise advertised and offered for sale by respondent Korvette. After being served with said complaint respondents, except for respondents Blacker, Kasinoff-Herman, Townsman and Leslie Lloyds, appeared and entered into agreements dated, respectively, July 6, 25, 26, and 31, 1961, containing consent orders to cease and desist purporting to dispose of all of this proceeding as to all of said

parties. Said agreements, which have been signed by the appearing respondents, by counsel for said respondents (except for respondent Bank Street which was not represented) and by counsel supporting the complaint, and approved by the Director and Acting Chief of Division of the Bureau of Deceptive Practices, have been submitted to the above-named hearing examiner for his consideration, in accordance with Section 3.25 of the Commission's Rules of Practice for adjudicative Proceedings.

The signatory respondents, pursuant to the aforesaid agreements, have admitted all the jurisdictional facts alleged in the complaint and agreed that the record may be taken as if findings of jurisdictional facts had been duly made in accordance with such allegations. Said agreements further provide that such respondents waive any further procedural steps before the hearing examiner and the Commission, the making of findings of fact or conclusions of law and all of the rights they may have to challenge or contest the validity of the orders to cease and desist entered in accordance with such agreements. It has been agreed that the orders to cease and desist issued in accordance with said agreements shall have the same force and effect as if entered after a full hearing and that the complaint may be used in construing the terms of said orders. It has also been agreed that the record herein shall consist solely of the complaint and said agreements, and that said agreements are for settlement purposes only and do not constitute an admission by respondents that they have violated the law as alleged in the complaint.

This proceeding having now come on for final consideration on the complaint and the aforesaid agreements containing consent orders, and it appearing that the orders provided for in said agreements cover all of the allegations of the complaint and provide for an appropriate disposition of this proceeding as to all parties signatory thereto, said agreements are hereby accepted and are ordered filed upon this decision's becoming the decision of the Commission pursuant to Sections 3.21 and 3.25 of the Commission's Rules of Practice for Adjudicative Proceedings, and the hearing examiner, accordingly, makes the following jurisdictional findings and order:

1. Respondent E. J. Korvette, Inc., is a corporation existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 12 East 46th Street, in the City of New York, State of New York.

Respondent Richel, Inc., doing business as Gus S. May, is a corporation existing and doing business under and by virtue of the laws of the State of California, with its office and principal place of business located at 9878 Wilshire Boulevard, in the City of Beverly Hills, State of California.

Respondent Ray Blumenthal, Jr., is an individual doing business as Ray's Shop for Men, with his office and principal place of business located at 222 North Palm Canyon Drive, in the City of Palm Springs, State of California.

Respondent Monte Factor, Ltd., is a corporation existing and doing business under and by virtue of the laws of the State of California, with its office and principal place of business located at 270 North Beverly Drive, in the City of Beverly Hills, State of California.

Respondent Bank Street Clothes, Inc., is a corporation existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 162 Fifth Avenue, in the City of New York, State of New York.

Respondent Al Meirow is an individual doing business as Al Meirow, with his office and principal place of business located at 133 Fifth Avenue, in the City of New York, State of New York.

Respondent Damon Creations, Inc., is a corporation existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 16 East 34th Street, in the City of New York, State of New York.

Respondents David Rappaport and Emanuel Rappaport are co-partners doing business as Lord Stuart Company with their office and principal place of business located at 16 East 34th Street, in the City of New York, State of New York.

Respondent Atlantic Shirt Co., Inc., is a corporation existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 1235 Broadway, in the City of New York, State of New York.

Respondent Lido Shirt Corporation is a corporation existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 915 Broadway, in the City of New York, State of New York.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents hereinabove named. The complaint states a cause of action against said respondents under the Federal Trade Commission Act, and this proceeding is in the interest of the public.

ORDER

It is ordered, That respondent, E. J. Korvette, Inc., a corporation, its officers, agents, representatives and employees, respondent Richel, Inc., a corporation, doing business as Gus S. May, or doing business under any other trade name, its officers, agents, representatives and employees, Respondent Ray Blumenthal, Jr., an individual doing business as Ray's Shop for Men, or doing business under any other trade

name, his agents, representatives and employees, respondent Monte Factor, Ltd., a corporation, its officers, agents, representatives and employees, respondent Bank Street Clothes, Inc., a corporation, its officers, agents, representatives and employees, respondent Al Meirow, an individual doing business as Al Meirow, or doing business under any other trade name, his agents, representatives and employees, respondent Damon Creations, Inc., a corporation, its officers, agents, representatives and employees, respondents David Rappaport and Emanuel Rappaport, co-partners doing business as Lord Stuart Company, or doing business under any other trade name, their agents, representatives and employees, respondent Atlantic Shirt Co., Inc., a corporation, its officers, agents, representatives and employees, and respondent Lido Shirt Corporation, a corporation, its officers, agents, representatives and employees, directly or through any corporate or other device, in or in connection with the advertising, offering for sale, sale or distribution of apparel merchandise and related products, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from entering into, continuing, cooperating in, or carrying out any planned common course of action, understanding, agreement, or combination between said respondent and any other respondent or respondents in the instant case, or between said respondent and any others not parties hereto, to:

1. Engage in, maintain or perpetuate any activities, acts or practices or to attempt to engage in, maintain or perpetuate any activities, acts or practices in purchasing, selling, manufacturing, or distributing said merchandise or products, whereby the origin, prior places of sale, past or present prices, or the quality or any other characteristic of said merchandise or products, is misrepresented, by any means or in any manner, or where the intent, purpose, or effect of same is to deceive, to mislead or to make any false claims concerning the origin, prior places of sale, prices, quality or other characteristics of said merchandise or products.

It is further ordered, That respondent E. J. Korvette, Inc., a corporation, and its officers, agents, representatives and employees, directly or through any corporate or other device, in connection with the advertising, offering for sale, sale or distribution of apparel merchandise and related products, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing directly or by implication:
 - (a) That any of said merchandise or products so advertised, offered for sale, sold, or distributed has been owned, was a part of the stock

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of, had been offered for sale by, or had been purchased by, any corporation, firm or individual when such is not the fact;

(b) That any of said merchandise or products previously has been offered for sale or sold in any place or geographical location, when such is not the fact;

(c) That any amount is the price at which any of said merchandise or products previously has been offered for sale or sold by any corporation, firm or individual, when such is not the fact; or

(d) That any saving is afforded in the purchase of said merchandise or products from the retail price of any corporation, firm or individual, which previously had sold or offered to sell same, unless the price at which said merchandise or products are offered by respondent, constitutes a reduction from the price at which said merchandise or products previously have been offered for sale or sold by said corporation, firm or individual in the recent regular course of business.

2. Misrepresenting, in any manner, savings available to purchasers at retail of any of said merchandise or products from respondent, or the amount by which the price of any of said merchandise or products is reduced from the retail price at which said merchandise or products previously have been offered for sale by respondent or another person in the recent regular course of business.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE
AS TO CERTAIN RESPONDENTS

Pursuant to Section 3.21 of the Commission's Rules of Practice, published May 6, 1955, as amended, the initial decision of the hearing examiner shall, on the 24th day of October, 1961, become the decision of the Commission; and, accordingly:

It is ordered, That the respondents ordered to cease and desist in the initial decision herein 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 contained in the aforesaid initial decision.

INITIAL DECISION AS TO RESPONDENTS BLACKER BROS., INC., KASINOFF-HERMAN, INC., TOWNSMAN CLOTHES, INC., AND LESLIE LLOYDS CLOTHES, INCORPORATED, before John Lewis, Hearing Examiner

Mr. William J. Boyd, Jr., counsel supporting the complaint.

No appearances for respondents.

The Federal Trade Commission, on January 16, 1961, issued and thereafter served its complaint in this proceeding charging the re-

spondents hereinabove named with having engaged in unfair and deceptive acts and practices and unfair methods of competition, in commerce, in violation of the Federal Trade Commission Act, by entering into a combination or conspiracy to deceive and mislead the purchasing public as to the sources and prices of, and savings to be realized on, apparel merchandise advertised and offered for sale by certain of them. Although duly served with said complaint, respondents Blacker Bros., Inc., Kasinoff-Herman, Inc., Townsman Clothes, Inc., and Leslie Lloyds Clothes, Incorporated, failed to file answer thereto within thirty (30) days, as required by Section 3.7 of the Commission's Rules of Practice for Adjudicative Proceedings and by the Notice served with said complaint.

Thereafter, a hearing was held on July 24, 1961, in Washington, D.C., before the undersigned hearing examiner, theretofore duly designated to hear this proceeding. No appearance was made at said hearing by any of the non-answering respondents. Counsel supporting the complaint advised the undersigned that arrangements had been made with the remaining respondents for an appropriate disposition of the proceeding as to said respondents. Counsel supporting the complaint thereupon moved that, in view of the failure of the non-answering respondents to appear and show cause, the case be closed for the taking of testimony as to said respondents and that, in accordance with Section 3.7(b) of the Rules of Practice, the hearing examiner find the facts to be as alleged in the complaint. Counsel submitted a form of proposed order and moved that said order be entered against such respondents. The undersigned granted said motion to the extent that findings and conclusions would be made, based upon the allegations of the complaint, and that the proposed order would be taken into consideration in the framing of an appropriate order.

This proceeding having now come on for final consideration as to respondents Blacker Bros., Inc., Kasinoff-Herman, Inc., Townsman Clothes, Inc., and Leslie Lloyds Clothes, Incorporated, on the complaint and the proposed order of counsel supporting the complaint, and it appearing that the order proposed covers all of the allegations of the complaint pertaining to said respondents and provides for an appropriate disposition of this proceeding as to said respondents, and the undersigned having been advised that the proceeding will be otherwise appropriately disposed of as to the remaining respondents, the undersigned finds that this proceeding is in the interest of the public, and, in accordance with Section 3.7 of the Rules of Practice, makes the following findings as to the facts, conclusion and order:

FINDINGS OF FACT

PARAGRAPH 1. The respondents named in this Paragraph One will sometimes hereinafter be referred to collectively as "respondent manufacturers."

(a) Respondent Blacker Bros., Inc., is a corporation organized and existing under the laws of the State of New York, with its principal office and place of business located at 53 West 23rd Street, New York, New York.

(b) Respondent Kasinoff-Herman, Inc., is a corporation organized and existing under the laws of the State of New York, with its principal office and place of business located at 80 Fifth Avenue, New York, New York.

(c) Respondent Townsman Clothes, Inc., is a corporation organized and existing under the laws of the State of New York, with its principal office and place of business located at 120 Fifth Avenue, New York, New York.

(d) Respondent Leslie Lloyds Clothes, Incorporated, is a corporation organized and existing under the laws of the State of New York, with its principal office and place of business located at 73 Fifth Avenue, New York, New York.

The respondent manufacturers named above in this Paragraph One are now, and at all times material hereto have been, engaged in the business of manufacturing and selling, or in selling and distributing, apparel merchandise, consisting of either one or more of the following items, men's suits, top coats, sport coats, slacks, dress shirts, sport shirts, ties and sweaters, to retailers and jobbers located in various parts of the United States. In the course and conduct of their respective businesses, each of said respondent manufacturers has shipped, and now ships, one or more of the above-named items of apparel merchandise from its place of business in the State of New York to purchasers located in other States and maintains a course of trade in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 2. In 1959, through a series of transactions in interstate commerce, as hereinafter found, respondent manufacturers and certain other manufacturers, and the operator of a chain of department stores, together with certain other retailers, entered into an understanding, agreement, combination and conspiracy between and among themselves to pursue, and they did pursue a planned common course of action between and among themselves to deceive and mislead the purchasing public or cause the purchasing public to be deceived and misled, through false and deceptive advertising and misrepresentations in

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connection with the purchasing, advertising, offering for sale and selling of a substantial quantity of apparel merchandise, consisting of but not limited to men's suits, top coats, sport coats, slacks (trousers), dress and sport shirts, ties and sweaters, by the department store chain.

Pursuant to said understanding, agreement, combination, conspiracy and planned common course of action, and in furtherance thereof, the department store chain, certain other retailers and respondent manufacturers and certain other manufacturers acted in concert and in cooperation in doing and performing the following methods, acts and practices:

(a) The department store chain entered into separate understandings and agreements with certain retailers to purchase a quantity of apparel merchandise from each of said retailers, with the department store chain being authorized by the retailers to publicize said purchase and to advertise and sell said apparel merchandise with the respective retailers' labels and trade names affixed to the apparel merchandise purchased from the particular retailer.

(b) The department store chain, in addition, entered into other separate understandings and agreements with the said retailers which purported to sell, assign and transfer to said department store chain certain purchase orders or purchase commitments for apparel merchandise which each retailer had purportedly previously placed with the respondent manufacturers and certain other men's clothing manufacturers. Pursuant to these understandings and agreements, the said manufacturers were purportedly authorized to deliver to the department store chain apparel merchandise that had been previously purchased by the respective retailers, and the department store chain was authorized to advertise and sell said purportedly assigned apparel merchandise with the labels and trade names of the respective retailers affixed thereto.

(c) Subsequent to entering into the understandings and agreements referred to and described in subparagraph (b) of this Paragraph Two, the department store chain entered into separate understandings and agreements with each of the respondent manufacturers and certain other manufacturers to purchase, and it did purchase, substantial quantities of apparel merchandise with labels affixed thereto bearing the trade names of the respective retailers. Pursuant to said understandings and agreements with the said manufacturers, the department store chain selected the types, styles, sizes and quantities of apparel merchandise which would be purchased from each of said manufacturers, and the department store chain furnished, or caused the said manufacturers to be furnished, with labels of each of the aforementioned retailers for sewing onto the apparel merchandise purchased.

(d) Following the making of the understandings and agreements referred to and described in the foregoing subparagraphs of this Paragraph Two, the department store chain placed a series of advertisements in newspapers circulated in interstate commerce, in which it stated or represented, (1) that the apparel merchandise offered for sale with the respective retailers' labels and price tickets affixed was apparel merchandise which had previously been stocked and offered for sale by such retailers, (2) that the amounts designated as "Original Prices" were the prices at which the merchandise had been sold by such other retailers in the recent, regular course of business, and (3) that the purchasers would be afforded savings equal to the differences between the "Original Prices" and the lower prices advertised by the department store chain.

PAR. 3. The statements and representations made by the department store chain concerning said apparel merchandise so advertised by it were false, misleading and deceptive in that:

(1) Except for a small quantity of apparel merchandise purchased and obtained directly from the above-mentioned retailers, all of the apparel merchandise advertised and offered for sale by the department store chain in the aforementioned advertisements, with the labels and price tickets of said retailers affixed thereto, was apparel merchandise which the department store chain had purchased directly from the respondent manufacturers and certain other manufacturers, who sewed and affixed the labels of the respective retailers to said apparel merchandise in accordance with the instructions and directions of the department store chain.

(2) Except for the small quantity of apparel merchandise which was purchased and obtained directly from each retailer, the merchandise advertised and offered for sale by the department store chain in the aforementioned advertisements, with the labels and price tickets of said retailers affixed thereto, was apparel merchandise which had never been stocked and offered for sale by any of said retailers and, consequently, the amounts designated as "Original Prices" of such retailers were never applicable to said apparel merchandise.

(3) The purchasers of the apparel merchandise with such other retailers' labels and price tickets affixed were not afforded savings equal to the differences between the higher and lower prices listed in the advertisements.

PAR. 4. All of the respondents hereinbefore referred to are in substantial competition, in commerce, with other corporations, firms, and individuals engaged in the sale of apparel merchandise of the same general nature as that sold by respondents.

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PAR. 5. The understanding, agreement, combination, conspiracy and planned common course of action in interstate commerce, and the methods, acts and practices of the respondents, as hereinbefore found, were designed and perpetrated to form some tenable basis for the department store chain using the aforesaid false, misleading and deceptive statements and representations in newspaper advertisements to increase substantially the sales of apparel merchandise by all of the respondents to the detriment of competition. The use by the department store chain of the aforesaid false, misleading and deceptive statements and representations had the capacity and tendency to mislead and deceive members of the purchasing public into the erroneous and mistaken belief that said statements and representations were true and into the purchase of substantial quantities of its apparel merchandise because of such mistaken and erroneous belief. As a result of the aforesaid understanding, agreement, combination, conspiracy and planned common course of action and the methods, acts and practices between and among the respondents hereinabove mentioned and other persons, firms and corporations, and as a result of the use of the aforesaid false, misleading and deceptive statements in newspaper advertising, substantial trade in commerce has been unfairly diverted to the respondent manufacturers and others from their competitors and substantial injury has thereby been done to competition in commerce.

CONCLUSION

The acts and practices of the respondent manufacturers and others, as hereinabove found, were, and are, all to the injury and prejudice of the public and of the competitors of the said respondents and constituted, and now constitute, unfair and deceptive acts and practices and unfair methods of competition, in commerce, within the intent and meaning of the Federal Trade Commission Act.

ORDER

It is ordered, That respondent corporations Blacker Bros., Inc., Kasinoff-Herman, Inc., Townsman Clothes, Inc., and Leslie Lloyds Clothes, Incorporated, and their respective officers, agents, representatives and employees, directly or through any corporate or other device, in or in connection with the advertising, offering for sale, sale or distribution of apparel merchandise and related products, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from entering into, continuing, cooperating in, or carrying out any planned common course of action, understanding, agreement, or combination between said respondents

and any other respondent or respondents in the instant case, or between said respondents and any others not parties hereto, to:

1. Engage in, maintain or perpetuate any activities, acts, or practices or to attempt to engage in, maintain or perpetuate any activities, acts or practices in purchasing, selling, manufacturing, or distributing said merchandise or products, whereby the origin, prior places of sale, past or present prices, or the quality or any other characteristic of said merchandise or products, is misrepresented, by any means or in any manner, or where the intent, purpose, or effect of same is to deceive, to mislead or to make any false claims concerning the origin, prior places of sale, prices, quality or other characteristics of said merchandise or products.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE
AS TO RESPONDENTS BLACKER BROS., INC., KASINOFF-HERMAN, INC.,
TOWNSMAN CLOTHES, INC., AND LESLIE LLOYDS CLOTHES, INCORPORATED

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 24th day of October, 1961, become the decision of the Commission; and, accordingly:

It is ordered, That respondents Blacker Bros., Inc., Kasinoff-Herman, Inc., Townsman Clothes, Inc., and Leslie Lloyds Clothes, Incorporated, 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.