

IN THE MATTER OF
FEDERATED DEPARTMENT STORES, INC.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF
SEC. 7 OF THE CLAYTON ACT

Docket C-981. Complaint, Aug. 5, 1965—Decision, Aug. 5, 1965

Consent order requiring the Nation's fourth largest department store company of Cincinnati, Ohio, to desist from acquiring any department store or general merchandise, apparel, or furniture store, as defined in this order, for the next 5 years, without the prior consent of the Commission.

COMPLAINT

The Federal Trade Commission has reason to believe that the above-named respondent has acquired the stock and assets of Bullock's, Inc., a coporation, in violation of Section 7 of the Clayton Act, as amended (U.S.C., Title 15, Section 18); and therefore, pursuant to Section 11 of said Act, it issues this complaint, stating its charges in that respect as follows:

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I

Definitions

1. For the purpose of this complaint, the following definitions shall apply:

(a) "Apparel" includes clothing and related articles for personal wear and adornment, for men, women and children.

(b) The term "department store or other GMAF store" shall mean retail stores or establishments in the following categories as specified in the kind-of-business classifications (SIC - Standard Industrial Classification) published in Appendix A of the Retail Trade-Area Statistics Reports issued under the title "U. S. Bureau of the Census, Census of Business, 1963, Retail Trade," as series BC63-RA:

(1) "Department stores" are retail stores normally employing 25 or more people and engaged in selling some items in each of the following lines of merchandise:

- (i) Furniture, home furnishings, appliances, radio and TV sets;
- (ii) A general line of apparel; and
- (iii) Household linens and dry goods.

An establishment with annual total sales of less than \$5 million, in which sales of any one of these groupings is greater than 80 percent of total sales, is not classified as a department store.

An establishment with annual total sales of \$5 million or more is classified as a department store even if sales of one of the groups described above is more than 80 percent of total sales, provided that the combined sales of the other two groups is \$500,000 or more (SIC 531).

(2) "GMAF stores" (General Merchandise, Apparel, Furniture stores) are retail stores in the following categories:

- (i) Department stores, as defined above;
- (ii) Other retail stores primarily engaged in the sale of apparel, which includes clothing, footwear, and related articles and accessories for personal wear and adornment, for men, women and children (SIC Major Group 56);
- (iii) Limited price variety stores—Retail stores primarily selling a variety of merchandise at low and popular price ranges, such as stationery, gift items, accessories, toilet articles, light hardware, toys, housewares, confectionery; these establishments frequently are known as "5 and 10 cent" stores and "5 cents to a dollar" stores, although they usually sell merchandise outside these price ranges (SIC 533);

(iv) Miscellaneous general merchandise stores—Retail stores primarily selling household linens and dry goods, and/or a com-

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bination of apparel, hardware, homewares or home furnishings; stores which meet the criteria for department stores except as to number of employees are included here (Part of SIC 539);

(v) Dry goods stores—Retail stores primarily selling dry goods, notions, and piece goods (Part of SIC 539);

(vi) Sewing, needlework stores—Retail stores primarily selling sewing and knitting supplies and yarn or any combination of these commodities (Part of SIC 539);

(vii) Furniture, home furnishings, and equipment stores—Retail stores primarily selling merchandise used in furnishing the home, such as furniture, floor coverings, draperies, glass and chinaware, domestic stoves, refrigerators, and other household electrical and gas appliances, including radio and TV sets (SIC Major Group 57). GMAF stores, as defined herein, correspond to all retail store groups under Bureau of Census Major Industry Groups No. 53, 56 and 57.

II

Federated

2. Respondent, Federated Department Stores, Inc. (Federated), is a coporation organized and existing under the laws of the State of Delaware, with its principal office located at 222 West 7th Street, Cincinnati, Ohio.

3. Federated is the largest among conventional department store companies in the United States, *i.e.*, those including large, downtown, traditional-type department stores carrying a wide variety of major brand items and offering a wide variety of customer services. It is the fourth largest department store company, and is outranked in annual sales volume only by Sears, Roebuck & Co., J. C. Penney Co., and Montgomery Ward & Co.

4. As as June 1, 1964, Federated operated 59 stores, occupying 13,159,000 square feet of floor space. Federated had eleven major store divisions, operating eleven major department stores in downtown shopping areas with 37 branch stores in suburban areas. Each of Federated's major stores is a leading retail institution in the community in which it is located—and the stores include such major department stores as Abraham & Strauss (Brooklyn, New York), Bloomingdale's (New York, New York), The Boston Stores (Milwaukee, Wisconsin), Burdine's (Miami, Florida), Filene's (Massachusetts), Foley's (Houston, Texas), Goldsmith's (Memphis, Tennessee), Lazarus (Columbus, Ohio), Rike's (Dayton, Ohio), Sanger-Harris (Dallas, Texas), and Shillito's (Cincinnati, Ohio). In addition, Federated also operated through its Fedway Division eleven smaller stores located as follows: Tucson, Arizona

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(downtown store and branch at El Con Shopping Center); Bakersfield, Pomona, and Los Angeles (Westwood Village), California; Albuquerque, New Mexico (downtown store and branch at Winrock Center); and Amarillo, Corpus Christi, Longview and Wichita Falls, Texas.

5. For the year ended January 28, 1956, Federated's total assets were \$218,609,000, net sales \$537,722,000 and net income \$22,064,000. By the year ended January 30, 1965, Federated's total assets had increased to \$630,571,092, net sales to \$1,215,348,000 and net income to \$64,469,000.

6. Federated has been in the vanguard of the department store merger movement, displaying a marked proclivity for growth by the acquisition of established, local department store companies throughout the United States. Since 1945 Federated has acquired the following department store companies:

<i>Acquired Company</i>	<i>Year Acquired</i>	<i>Sales of Acquired, Year Preceding Acquisition</i>	<i>No. of Stores</i>
Foley Brothers Houston, Texas	1945	\$ 8,000,000	1
B. Peck Company Lewiston, Maine	1947 (sold in 1963)	2,100,000	1
Halliburton's (E. P. Halliburton, Inc.) Oklahoma City, Oklahoma	1947 (closed in 1961)	4,600,000	1
Ware's (H. R. Ware Corp.) New Rochelle, New York	1947	3,800,000	1
Milwaukee Boston Store, Inc. Milwaukee, Wisconsin	1948	34,300,000	4
Sanger Bros., Inc. Dallas, Texas	1951	22,700,000	3
Burdine's, Inc. Miami, Fla.	1956	40,000,000	4
J. Goldsmith & Sons Co. Memphis, Tenn.	1959	22,300,000	1
The Rike-Kumler Co. Dayton, Ohio	1959	49,600,000	2
Levy Bros. Clothing Co. Tucson, Arizona	1960	3,800,000	1
A. Harris and Co. Dallas, Texas	1961	11,600,000	2
Bullock's, Inc. Los Angeles, California	1964	196,600,000	24

During the ten years, 1955-1964, Federated's net sales increased \$677,600,000 with \$323,900,000 or 47.8%, of such increase representing the combined sales in the year preceding acquisition of six department store companies acquired during said period.

7. At all times relevant herein, Federated purchased, sold and shipped products in interstate commerce in various parts of the United States.

III

Bullock's

8. Prior to August 29, 1964, Bullock's, Inc. (Bullock's), was a corporation organized and existing under the laws of the State of Delaware, with its principal office located at 601 S. Westmoreland Avenue, Los Angeles, California.

9. Bullock's was one of the largest department store companies operating on the West Coast; it ranked as the 17th largest department store company in the United States.

10. Bullock's business was conducted by its Bullock's division and its I. Magnin & Co. division. The five major department stores and two apparel stores operated by the Bullock's division under the name "Bullock's" were among the leading "quality" stores in Southern California. The five department stores carried the classes of general merchandise usually offered by department stores, but sales were concentrated in wearing apparel and home goods; the two apparel stores carried women's, children's and men's apparel and accessories. Although all price lines were represented, the Bullock's stores emphasized quality wearing apparel and accessories, and less than 10% of their total sales volume was attributable to furniture, housewares and appliances. As of June 1, 1964, the seven "Bullock's" stores occupied approximately 2,240,000 square feet of building floor area.

11. The seventeen "I. Magnin & Co." apparel stores, operated by the I. Magnin & Co. division of Bullock's were among the nation's fashion leaders. The "I. Magnin & Co." stores carried high style women's, men's and children's wearing apparel and accessories, and incidental lines. As of June 1, 1964, fourteen of the "I. Magnin & Co." stores were located in California, one in Seattle, Washington, one in Portland, Oregon and one in Phoenix, Arizona. These seventeen stores occupied more than 943,000 square feet of floor space as of June 1, 1964.

12. As of the fiscal year ended February 1, 1964, Bullock's had total assets of \$113,536,030, net sales of \$196,561,423 and net income of \$9,445,377. For the fiscal years ended January 29, 1955

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through February 1, 1964, Bullock's net sales increased, entirely through internal expansion, 59.7%, from \$123,102,996 to \$196,561,423.

13. At all times relevant herein, Bullock's purchased, sold and shipped products in interstate commerce in various parts of the United States.

IV

Nature of Trade and Commerce

14. GMAF stores comprise the second largest group of retailers in the United States, with a sales volume of approximately \$55 billion in 1963, and they are exceeded in sales only by retail food stores. GMAF store sales represent approximately 23% of all retail sales in the United States.

15. Within the GMAF store group, department stores constitute the largest component, accounting for 37% of GMAF store sales. Department stores, moreover, are the third most important group of retail stores in the United States, exceeded in sales volume only by food stores and automotive dealers. Their national sales volume of approximately \$20.5 billion in 1963 represented over 8% of all retail sales in the country. Department stores account for approximately 35% of apparel sales, 43% of women's and children's apparel sales, 46% of household linens and dry goods sales.

16. Department stores are recognized by the consuming public and in the trade as a distinct line of business:

(a) They are particularly favored by the public because they sell a cluster of commodities and services not duplicated by other retailers. They offer the opportunity to satisfy under one roof shopping needs for a wide variety of merchandise, including apparel, household linens and dry goods, furniture, appliances, and other housewares. This package of products is combined with an array of services such as the extension of credit, delivery of goods, the sending of goods on approval with liberal return privileges, fashion shows, and a number of other services. Moreover, frequently they enjoy a favorable image of stability and respectability attributable, at least in part, to their size and importance as retailers in the communities which they serve.

(b) In the last connection, department stores enjoy an image which derives, at least in part, from the fact that they are the major advertisers in the communities which they serve, usually advertising more than all other GMAF stores combined.

(c) Statistics on department store sales and other economic data relating to department stores, institutionally classified as such,

are regularly gathered and published by the United States Bureau of Census, other federal agencies, various state agencies, the National Retail Merchants Association, universities, and other trade publications and organizations.

(d) Department stores differ from other GMAF stores in that they carry far more private label merchandise. For example, Federated carries a wide variety of private label merchandise. Large department store companies are in a particularly advantageous position to obtain private label merchandise because of their volume of purchases.

17. Since at least 1954, there has been a substantial degree of concentration in the department store industry. Between 1954 and 1961, concentration among department store companies steadily and significantly increased. The following represent the approximate shares of department store sales commanded by the nation's largest department store companies with eleven or more department stores, during this period:

	1954	1961
Five largest	38%	41%
Ten largest	50%	56%
Twenty largest	57%	66%

Thus, during only a seven-year period, the top twenty department store companies increased their aggregate market share by a factor of about a seventh, and the top ten increased their share by a factor of over a tenth its initial size.

18. The significant increase in the market shares commanded by the major department store companies is attributable in substantial part to their phenomenal expansion by mergers. During the period from 1951 to date, six of the leading conventional department store companies—Federated, Allied Stores Corporation, The May Company, R. H. Macy & Co., Inc., Associated Dry Goods Corporation, and City Stores Co.—have made more than 45 acquisitions of department store companies throughout the United States, involving more than 100 stores, thus substantially contributing to the department store merger movement, to concentration, and to the trend toward the replacement of independent, local firms by national department store companies.

19. The competitive impact of mergers and concentration in the department store industry, and of the growth of national companies, has been felt both in local and national markets and on both the buying and selling sides of the markets in which department stores operate. On the selling, or retail, side of the market, mergers have become a substitute for internal expansion into new markets by

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existing department store companies, such as Federated. The merger movement has thus eliminated potential competition and has tended to remove the threat of entry of department store companies and the restraining influence which the threat of such entry may have upon non-competitive behavior. The replacement of independent local concerns by national department store companies has tended to discipline the market behavior of smaller competitors reluctant to enter into competition with companies many times their size and with many times their financial resources, and has tended to bring about a deterioration of the vigor of competition among those national department store companies which face one another in several markets. On the buying side of the market, suppliers have tended to favor such national companies, because of their power as large buyers, with preferences and advantages over other purchasers.

V

Violation Charged

20. The directors of Federated and Bullock's entered into an agreement on April 27, 1964, to merge Bullock's into Federated. The agreement was ratified by the owners of two-thirds of the common stock of each corporation at the July 17, 1964 special meetings of each corporation's shareholders, called for this purpose. Therefore, Federated issued approximately 3,600,000 additional shares of its common stock (with a market value of approximately \$215,000,000) in exchange for 2,600,000 shares of Bullock's stock, at a ratio of 1.4 shares of Federated for each share of Bullock's. On or about August 29, 1964, Federated merged into itself all of the assets and business of Bullock's.

21. The effect of the merger of Bullock's into Federated, viewed as a part of its series of acquisitions as alleged in Paragraph 6 herein, and in the context of the trend towards concentration and the merger movement in the department store industry, described in Paragraphs 17 and 18 herein, may be substantially to lessen competition or tend to create a monopoly in the department store industry and the GMAF store industry in the United States, and in the sale and purchase of apparel and other merchandise by department stores and other GMAF stores throughout the United States or certain sections thereof, in violation of Section 7 of the Clayton Act, as more fully described below in paragraph 22.

22. The effects of the foregoing violation have been and may be the following, among others:

- (a) Competition generally in the retail sale of apparel and other

merchandise distributed by GMAF stores, including department stores, may be substantially lessened;

(b) This merger contributes to the overall trend toward concentration and oligopoly in the department store industry described in Paragraphs 18-19 and thus tends further to bring about the deterioration of the vigor of competition, described in Paragraph 19;

(c) The merger may trigger other mergers in the department store industry and the GMAF store industry, thus multiplying the competitive impact of the instant merger, as hereinabove described, and tending to transform the department store industry from one of viable, independent, locally owned businesses into a concentrated, national industry;

(d) Competition generally in the purchase by department stores and other GMAF stores and the sale by suppliers of apparel and other merchandise distributed by GMAF stores may be substantially lessened;

(e) The members of the consuming public will be denied the benefits of free and unrestricted competition in the department store industry and the GMAF store industry, and in the sale and purchase of apparel and other merchandise distributed by GMAF stores.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondent named in the caption hereof, and the respondent having been furnished thereafter with a copy of a draft of complaint which the Bureau of Restraint of Trade proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondent with violation of Section 7 of the Clayton Act, as amended; and

The respondent and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondent of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by the respondent that the law has been violated as alleged in such complaint, and waivers and provisions as required by the Commission's rules; and

The Commission, having reason to believe that the respondent has violated Section 7 of the Clayton Act, as amended, and having determined that complaint should issue stating its charges in that respect, hereby issues its complaint, accepts said agreement, makes

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the following jurisdictional findings and enters the following order:

1. Respondent Federated Department Stores, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 222 West 7th Street, Cincinnati, Ohio.
2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent.

ORDER

I

It is ordered, That, for five (5) years from the effective date of this order, respondent, Federated Department Stores, Inc., shall cease and desist from acquiring, directly or indirectly, without first notifying the Federal Trade Commission and obtaining its consent, any department store or other GMAF store, or any interest in capital stock or other share capital, or any assets constituting a substantial part of all of the assets, of any concern engaged in the department store or other GMAF store business, in the United States.

II

It is further ordered, That Section I of this order shall terminate if the Federal Trade Commission, through trade regulation rules or other like non-adjudicative industry wide proceedings, issues rules or guidelines covering the subject matter of this order.

III

It is further ordered, That, in the event the Federal Trade Commission, in any adjudicative or consent order proceeding involving a market extension acquisition of one or more department or other GMAF stores by a company which owns or operates one or more department stores, issues any order which imposes limitations on future such market extension acquisitions less restrictive than the comparable provisions of this order, then the Federal Trade Commission shall, on application of respondent, pursuant to Rule 3.28 of the Commission's Rules of Practice, reopen this proceeding in order to make whatever revisions, if any, are necessary and appropriate to bring the restrictions imposed on respondent herein into conformity with those imposed by such order.

DEFINITIONS

The term "department store or other GMAF store," as used in this order, shall mean retail stores in the following categories as specified in the kind-of-business classifications (SIC - Standard

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Industrial Classification) published in Appendix A of the Retail Trade-Area Statistics Reports issued under the title, "U.S. Bureau of the Census, Census of Business, 1963, Retail Trade," as series BC63-RA:

1. "Department stores" are retail stores normally employing 25 or more people and engaged in selling some items in each of the following lines of merchandise:

- (i) Furniture, home furnishings, appliances, radio and TV sets;
- (ii) A general line of apparel; and
- (iii) Household linens and dry goods.

An establishment with annual total sales of less than \$5 million, in which sales of any one of these groupings is greater than 80 percent of total sales, is not classified as a department store.

An establishment with annual total sales of \$5 million or more is classified as a department store even if sales of one of the groups described above is more than 80 percent of total sales, provided that the combined sales of the other two groups is \$500,000 or more (SIC 531).

2. "GMAF stores" are retail stores in the following categories:

- (i) Department stores, as defined above;
- (ii) Other retail stores primarily engaged in the sale of apparel, which includes clothing, footwear, and related articles and accessories for personal wear and adornment, for men, women and children (SIC Major Group 56);
- (iii) Limited price variety stores—Retail stores primarily selling a variety of merchandise at low and popular price ranges, such as stationery, gift items, accessories, toilet articles, light hardware, toys, housewares, confectionery; these establishments frequently are known as "5 and 10 cent" stores and "5 cents to a dollar" stores, although they usually sell merchandise outside these price ranges (SIC 533);
- (iv) Miscellaneous general merchandise stores—Retail stores primarily selling household linens and dry goods, and/or a combination of apparel, hardware, homewares or home furnishings; stores which meet the criteria for department stores except as to number of employees are included here (Part of SIC 539);
- (v) Dry goods stores—Retail stores primarily selling dry goods, notions, and piece goods (Part of SIC 539);
- (vi) Sewing, needlework stores—Retail stores primarily

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selling sewing and knitting supplies and yarn or any combination of these commodities (Part of SIC 539); and

(vii) Furniture, home furnishings, and equipment stores—Retail stores primarily selling merchandise used in furnishing the home, such as furniture, floor coverings, draperies, glass and chinaware, domestic stoves, refrigerators, and other household electrical and gas appliances, including radio and TV sets (SIC Major Group 57).

It is further ordered, That the respondent herein shall, within sixty (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.
