

IN THE MATTER OF
THE MAY DEPARTMENT STORES COMPANY

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

Docket C-1105. Complaint, Sept. 9, 1966—Decision, Sept. 9, 1966

Consent order forbidding the Nation's sixth largest department store chain, with annual sales of \$943 million in 1965, from acquiring any department store or other GMAF (General Merchandise, Apparel and Furniture) store for 10 years without the prior consent of the Federal Trade Commission.

COMPLAINT

The Federal Trade Commission, having reason to believe that the above-named respondents have violated the provisions of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and that a proceeding in respect thereof would be in the public interest, issues this complaint, stating its charges as follows:

I. Definitions

1. For the purposes of this complaint, the following definitions are applicable:

(a) "Apparel" includes all clothing and related articles and accessories for personal wear and adornment, exclusive of footwear, for men, women and children. This definition corresponds to Bureau of Census commodity classifications 140 and 160, combined, as used in the 1963 Census of Business.

(b) "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 is not classified as a "department store" if: (a) sales of any one of these groups is greater than 80 per cent of total sales, or (b) sales of groups (ii) and (iii) combined represent less than 20 per cent of total sales. 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 per cent of total sales, provided that the combined annual sales of the other two groups is \$500,000 or more. This definition corresponds to Bureau of Census Industry Classification No. 531, as used in the 1963 Census of Business.

(c) "General Merchandise, Apparel, Furniture stores" (hereafter referred to as "GMAF stores") include retail establishments in the following categories:

(i) Department stores;

(ii) Other stores primarily engaged in the sale of apparel; Bureau of Census Major Industry Group No. 56;

(iii) Limited price variety stores—establishments 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¢ stores," although they usually sell merchandise outside these price ranges; these stores comprise Bureau of Census Industry Classification No. 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; these stores comprise Bureau of Census Industry Classification No. 539.

(v) 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

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gas appliances, including radio and TV sets; such stores comprise Bureau of Census Major Industry Group No. 57.

GMAF stores, as defined herein correspond to all retail store groups under Bureau of Census Major Industry Groups No. 53, 56, and 57.

(d) "SMSA" means "Standard Metropolitan Statistical Area," as defined by the Bureau of the Budget and the Bureau of Census.

II. May

2. Respondent The May Department Stores Company (hereafter referred to as "May") is a corporation organized and existing under the laws of the State of New York, with its principal office located at Sixth and Olive Streets, St. Louis, Missouri 63101.

3. May is the sixth largest department store chain in the United States, with annual sales of approximately \$943 million in 1965 and total assets of approximately \$645 million.

4. May has eleven major store divisions. It operates thirteen major department stores in the downtown areas of large metropolitan centers, and fifty-four branch stores in smaller cities and in suburban areas. Each of May's major store groups is a leading retail institution in the communities in which it is located. Included are such prominent store groups as The Hecht Company (Baltimore, Maryland; Washington, D.C.), The May Company (Cleveland, Ohio; Los Angeles and San Diego, California), O'Neil's (Akron, Ohio), May-D & F (Denver, Colorado), Kaufmann's (Pittsburgh, Pennsylvania), May Cohens (Jacksonville, Florida), Farnum-Barr Company (St. Louis, Missouri), Strouss-Hirshberg (Youngstown, Ohio), G. Fox and Company (Hartford, Connecticut), and Meier & Frank, Inc. (Portland, Oregon).

5. May has participated aggressively in the department store merger movement, evidencing a decided tendency to acquire established local department store companies throughout the United States. Since 1952, May has acquired the following department store companies:

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Acquired Company	Year Acquired	Sales in Year Preceding Acquisition	Number Of Stores Acquired
Spring Holzworth, Inc. Alliance, Ohio.	1952	\$ 1.3 million*	1
Sharon Stores Co. Sharon, Pennsylvania.	1954	\$ 4.5 million	1
Erlanger Dry Goods Co. Alliance, Massillon and Canton, Ohio.	1957	\$ 5.7 million	4
The Daniels & Fisher Stores Company, Denver, Colorado.	1957	\$ 9.7 million	3
Cohen Bros. Jacksonville, Florida	1959	\$ 10.4 million	1
The Hecht Company, Baltimore, Maryland and Washington, D.C.	1959	\$101.7 million	9
G. Fox & Co., Hartford, Connecticut.	1965	\$ 65.4 million	2
Meier & Frank Co., Inc. Portland, Oregon.	1966	\$ 71.1 million	3
Totals—8 Companies		\$269.8 million	24 Stores

*Estimate.

6. During the fifteen years 1951–1965, May's net sales increased from \$417 million to \$943 million. Stores acquired by May in this period had sales in the year preceding acquisition of \$270 million; thus, more than 51% of May's total growth is due directly to its acquisitions.

7. May's program of horizontal and market extension acquisitions has been aimed at achieving the dominant position in an increasing number of important local markets. Since 1951, its acquisitions have directly affected ten local markets, and achieved for May a market share of over 23% in all but one of these. The market shares resulting from these acquisitions are as follows:

Market	Year of Acquisition	May's Market Share Before the Acquisition	Resulting Market Share
Canton, Ohio SMSA	1952	3.9%*	12.1%*
Mercer County, Penna.	1954	0	64.5%*
Canton, Ohio SMSA	1957	16.2%*	41.9%*
Denver SMSA	1957	17.7%	23.7%
Colorado Springs SMSA	1957	0	6.9%
Jacksonville SMSA	1959	0	33.8%*
Baltimore SMSA	1959	7.6%*	23.4%*
Washington SMSA	1959	0	27.6%*
Hartford SMSA	1965	0	46.4%*
Portland SMSA	1966	0	43.5%*
Marion and Polk Counties, Oregon	1966	0	43.1%*

*Computed for nearest census year (1954, 1958 or 1963).

8. May's retained earnings currently exceed \$230 million. May has for many years enjoyed a substantial cash flow and ready access to institutional funds and other sources of capital. During 1964 May had available to it net earnings of \$41 million, proceeds from a long-term institutional loan of \$25 million, and cash flow generated by depreciation and amortization of \$15 million. Yearly capital expenditures have ranged upwards of \$30 million, and May advised its stockholders that the \$40 million of such expenditures planned for 1965 "will be provided by short-term investments now on hand plus retained earnings." May also advised its stockholders that its expansion plans have been accelerated and that May "should have 85 to 90 stores in operation by 1970," which "would add approximately 31% to our total store area in the next five years."

9. May, at all times relevant herein, has been engaged "in commerce" within the meaning of the Clayton Act.

III. The Acquired Companies

A. *Meier & Frank*

10. Meier & Frank Company, Inc. (hereinafter referred to as "Meier & Frank"), was, prior to its acquisition by May in 1966, a corporation organized and existing under the laws of the State of Oregon, with its principal office and principal place of business located at 621 S.W. Fifth Avenue, Portland, Oregon 97204.

11. Meier & Frank was, at the time of its acquisition, the leading department store company in Oregon. Its three stores served the population centers of the State. Meier & Frank did 44% of the department store business in Portland, and 43% in Salem. In 1964, its last full year of independent operation, Meier & Frank had total sales of approximately \$71 million and total assets of approximately \$56 million.

12. Meier & Frank, at all times relevant herein, was engaged "in commerce" within the meaning of the Clayton Act.

B. *Fox*

13. G. Fox & Co., Inc. (hereinafter referred to as "Fox"), was, prior to its acquisition by May in 1965, a corporation organized and existing under the laws of the State of Connecticut, with its principal office and place of business located at 956-986 Main Street, Hartford, Connecticut.

14. Fox was, at the time of its acquisition, the leading department store company in Hartford with 46% of department store

sales. It operated two department stores in downtown Hartford, one under the name of "G. Fox & Co." and the other under the name of "Brown Thomson, Inc." In 1964, its last full year of independent operation, Fox had total sales of approximately \$65 million and total assets of approximately \$42 million.

15. Fox, at all times relevant herein, was engaged "in commerce" within the meaning of the Clayton Act.

IV. Nature of Trade and Commerce

A. *Generally*

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

17. Within the GMAF store group, department stores constitute the largest component, accounting for 37% of total 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 and stores. Their national sales volume of approximately \$20.5 billion in 1963 represented about 8% of all retail sales in the country. Department stores account for approximately 40% of apparel sales.

18. 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. As a result of department stores' enormous advertising expenditures, they frequently receive preferred treatment from newspapers in the form of free publicity.

(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, various state agencies, the National Retail Merchants Association, universities, and other trade publications and organizations.

*B. Mergers and Concentration in the
Department Store Industry*

19. Since at least 1948, there has been a substantial degree of concentration in the department store industry. Moreover, between 1948 and 1963, the latest date for which published Census data is available, concentration among department store chains steadily and significantly increased. The approximate shares of department store sales commanded by the chains during this period, compared with the shares accounted for by the independent segment of the industry, are as follows:

Year	Market Share	
	Chains (6 or more stores)	Independents (1-5 stores)
1948	45.8%	54.2%
1954	61.4%	38.6%
1958	69.0%	31.0%
1963	80.8%	19.2%

20. The significant increase in concentration in the department store industry is largely attributable to the expansion of the major chains by mergers and acquisitions. Between 1951 and 1965, the twenty largest department store chains made approximately 84 acquisitions of department store companies throughout the United States, involving some 160 department stores and some 200 other stores. In general, these acquisitions have been made in the "choice outlet" segment of the industry—that segment which comprises established, respectable, full-line department stores enjoying a leading position in the areas in which they operated, and in which the increase in concentration has been especially significant.

21. As described in Paragraphs 5, 6 and 7, May has contributed

substantially to the trend toward concentration in the industry during this period by its series of acquisitions of "choice" stores.

V. The Acquisitions

22. On or about November 27, 1965, May acquired the operating assets of Fox in return for 720,000 shares of May common stock worth approximately \$41 million at the time.

23. On or about July 27, 1966, May effectuated the merger of Meier & Frank into May. May acquired Meier & Frank in return for May common stock and cash having a total value of more than \$40 million.

VI. Effects of the Acquisitions

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

(a) Competition may be substantially lessened, and there may be a tendency to create a monopoly, in the department store industry and in the "choice outlet" segment thereof, in the GMAF store industry, and in the retail sale of apparel and other merchandise distributed by department stores, in the United States generally and in various portions thereof;

(b) Concentration in the department store industry, the GMAF store industry, and in the sale of apparel and other lines of merchandise sold by department stores may be increased, in the United States generally and in various portions thereof;

(c) Deconcentration in the department store industry, the GMAF store industry, and in the sale of apparel and other lines of merchandise sold by department stores may be prevented, in the United States generally and in various portions thereof;

(d) May may have achieved a decisive competitive advantage over its smaller, less diversified, and less powerful competitors in the department store industry, the GMAF store industry, and in the sale of apparel and other merchandise sold by department stores in each area where May operates;

(e) Other acquisitions in the department store industry, in the "choice outlet" segment thereof, and in the GMAF store industry, in the United States, may be encouraged or stimulated, thus exacerbating the competitive impact of the instant acquisitions, as hereinbefore described, thereby tending further to transform the department store and GMAF store industries from ones composed of viable, independent, locally-owned businesses into concentrated and nationally-managed industries;

(f) The members of the consuming public, in the United States generally and in various portions thereof, may be deprived of the benefits of free and unrestricted competition in the department store industry, and in the "choice outlet" segment thereof, in the GMAF store industry, and in the sale of apparel and other merchandise sold by department stores.

VII. Violation Charged

25. The effects of May's acquisition of Meier & Frank and of the assets of Fox, viewed individually, viewed together, or viewed as part of the series of acquisitions alleged in Paragraphs 5, 6, 7 and 20, may be substantially to lessen competition or to tend to create a monopoly, in violation of Section 7 of the Clayton Act, as more fully described above in Paragraph 24.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondent named in the caption hereof, to wit: the acquisition of the operating assets of G. Fox & Co., Incorporated, by The May Department Stores Company, and the merger of Meier & Frank Company, Inc., into The May Department Stores Company; and the respondent having been furnished thereafter with a copy of a draft of complaint by the Bureau of Restraint of Trade and which draft of complaint, if approved and 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 the following jurisdictional findings and enters the following order:

1. Respondent The May Department Stores Company is a corporation organized, 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 Sixth and Olive Streets, St. Louis, Missouri. 63101

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 ten (10) years from the effective date of this order, respondent, The May Department Stores Company, 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 industrywide proceedings, issues rules or guide lines covering the subject matter of this order.

III

It is further ordered, That, in the event of 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.

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