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It is further ordered, That, within sixty (60) days after service of this order, The May Department Stores Company shall submit in writing to the Federal Trade Commission a report setting forth in detail the manner and form in which it has complied, is complying, and intends to comply, with the provisions of this order.

IN THE MATTER OF

E. J. KORVETTE, INC., AND SPARTANS INDUSTRIES, INC.

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

Docket C-1106. Complaint, September 9, 1966—Decision, September 9, 1966

Consent order approving the merger of the first and seventeenth nationally ranked discount department store chains, both headquartered in New York City, and requiring the surviving corporation to divest 97 stores recently acquired by the smaller chain (Spartans) and 43% of the stock interest presently owned by the larger chain (Korvette) in two of its New York City competitors;

The order also forbids the surviving corporation from acquiring any GMAF (General Merchandise, Apparel and Furniture) store for 10 years without prior approval of the Federal Trade Commission, and limits the amount of apparel and hosiery which the corporation may supply its own retail outlets from its manufacturing facilities.

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 Section 5(a)(1) of the Federal Trade Commission Act, 15 U.S.C. § 45(a)(1) 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 purposes of this complaint, the following definitions apply:

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(a) "SMSA" and "SCA" mean, respectively, "Standard Metropolitan Statistical Area" and "Standard Consolidated Area," each as defined by the U.S. Bureau of the Budget and used by the U.S. Bureau of the Census. Specific SMSA's and SCA's referred to herein are located in the following States but include only the following subdivisions thereof (counties unless otherwise indicated):

SCA's	STATES	SUBDIVISIONS
New York—Northeastern New Jersey	New York	New York Kings Queens Bronx Richmond Nassau Suffolk Westchester Rockland
	New Jersey	Essex Morris Union Hudson Bergen Passaic Middlesex Somerset
Chicago—Northwestern Indiana	Illinois	Cook Du Page Kane Lake McHenry Will
	Indiana	Lake Porter
SMSA's	STATES	SUBDIVISIONS
Cleveland	Ohio	Cuyahoga Geauga Lake Medina
Dallas	Texas	Collins Dallas Denton Elles
Detroit	Michigan	Macomb Oakland Wayne
Ft. Worth	Texas	Johnson Tarrant

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SMSA's—Continued	STATES	SUBDIVISIONS
Kansas City	Missouri	Cass Clay Jackson Platte -----
	Kansas	Johnson Wyandette -----
Milwaukee	Wisconsin	Milwaukee Ozaukee Waukesha -----
Minneapolis—St. Paul	Minnesota	Anoka Dakota Hennepin Ramsey Washington -----
Oklahoma City	Oklahoma	Canadian Cleveland Oklahoma -----
Philadelphia	Pennsylvania	Bucks Chester Deleware Montgomery Philadelphia -----
	New Jersey	Burlington Camden Gloucester -----
San Antonio	Texas	Bexar Gaudelupe -----
Shreveport	Louisiana	Bossier (Parish) Caddo (Parish) -----
St. Louis	Missouri	St. Louis (City) Franklin Jefferson St. Charles St. Louis -----
	Illinois	Madison St. Clair -----
Trenton	New Jersey	Mercer -----
Washington	District of Columbia	Washington (City) -----
	Maryland	Montgomery Prince Georges -----
	Virginia	Alexandria (City) Fairfax (City) Falls Church (City) Arlington Fairfax -----

(b) "Department stores," as used herein, corresponds with Bureau of the Census Industry Classification No. 531, 1963 Census of Business. It refers to retail stores normally employing 25 or more people and engaged in selling some items of each of the following groups of merchandise:

(1) Furniture, home furnishings, appliances, radio TV sets; and

(2) A general line of apparel; and

(3) Household linens and dry goods.

An establishment with total annual sales of less than \$5 million is not classified as a "department store" if (a) sales of any one of the said lines represent more than 80% of total sales, or (b) sales of the second and third lines combined represent less than 20% of total sales. An establishment with total sales of \$5 million or more is classified as a "department store," even if sales of one of the said lines represent more than 80% of its total sales, provided that the combined annual sales of the other two groups is \$500 thousand or more.

(c) "Discount department stores," as used herein, are department stores, as defined in (b) above, which utilize mostly self-service techniques and operate at a lower gross margin than most other department stores.

(d) "GMAF stores," as used herein, refers to all retail establishments included in the following Bureau of the Census Major Industry Group and Industry Classification as used in the 1963 Census of Business:

<i>Census Number</i>	<i>Descriptions</i>
Classification #531	Department stores
Major Industry Group #56	Other stores primarily engaged in the sale of apparel
Classification #533	Limited price variety stores
Classification #539	Miscellaneous general merchandise stores
Major Industry Group #57	Furniture, home furnishings and equipment stores

(e) "Apparel" as used herein corresponds with Bureau of the Census Merchandise Lines No. 140 and 160, 1963 Census of Business, combined, and includes all clothing and related articles and accessories for personal wear and adornment, exclusive of footwear, for men, women and children.

(f) "Appliances," as used herein corresponds with Bureau of

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the Census Merchandise Line No. 220, 1963 Census of Business, and includes all major household appliances, radio and TV sets, record players, tape recorders, records, tapes, sheet music and music instruments.

II Spartans

2. Respondent Spartans Industries, Inc. (hereinafter referred to as "Spartans"), a Delaware corporation with its principal office in New York City, New York, was organized in 1959 to succeed to an apparel manufacturing business started in 1936.

3. As a major producer of popular priced men's, women's and children's apparel particularly shirts, blouses and nightwear, Spartans in 1965 produced about 75 million units of apparel for sale at wholesale to approximately 8,000 retail accounts. In 1963, when it was producing less than half its 1965 output of apparel, Spartans accounted for shares of total U.S. production ranging from 4.8% to 7% in three apparel categories and from 2.2% to 3.6% in five other apparel categories, as follows:

<i>Apparel Categories</i>	<i>Spartans' Share of 1963 Census Total Production</i>
Women's and children's nightwear	7.0%
Girls' blouses, waists and shirts, woven	5.2%
Women's blouses, waists and shirts, woven	4.8%
Women's playshorts, pedal pushers, Bermudas	3.6%
Men and boys' woven dress and sport shirts	3.1%
Men and boys' knit outerwear sport shirts	2.4%
Women's dozen-priced dresses	2.2%

4. In 1960 Spartans began integrating forward into retailing. Between 1960 and 1965 it carried on an aggressive expansion, opening 44 discount department stores offering a wide variety of consumer products, particularly apparel and other soft goods, in 15 States, largely in mid-America.

5. In 1965 Spartans acquired a drug store chain (Crank Drug Stores) in the mid-continent area; but otherwise this dynamic and aggressive business organization expanded entirely through internal growth until the end of 1965. By the beginning of 1966, Spartans' net sales (wholesale and retail) were running about \$200 million per year and its assets were approximately \$80 million. Its discount department store sales (including its leased departments) alone amounted to an estimated \$129 million in 1965

and gave Spartans a rank among the largest of all discount department store operations in the United States.

6. At all times relevant hereto Spartans has been and is now engaged in commerce within the meaning of the Clayton Act and the Federal Trade Commission Act.

III Spartans' Acquisition of Atlantic Thrift Centers Inc.

7. Early in 1966 Spartans began an aggressive campaign to acquire competitors, customers and suppliers. Spartans' first major acquisition was of a competitor and customer. As of January 29, 1966, for approximately \$19 million, it purchased all the stock of another of the largest discount department store operations in the United States, Atlantic Thrift Centers, Inc. (hereinafter called "Atlantic"), a Delaware corporation with assets of about \$30 million and annual sales of approximately \$140 million, including sales of leased departments. Thereafter on March 12, 1966, Spartans merged Atlantic into itself and now operates, along with its own 44 stores, Atlantic's 49 discount department stores (known as "Atlantic Thrift Centers").

8. Atlantic's discount department stores, like Spartans' were located principally in mid-America, although it also operated a number of such stores along the East Coast. In eleven metropolitan areas where these two aggressive price competitors had both been opening stores in recent years, their (combined) market shares ranged from 2.7% to 14.7% of total department store sales:

SMSA	Initial Market Entry		Combined Market Share (1965)
	Spartans	Atlantic	
Shreveport, La.	9/61	8/61	14.7%
Oklahoma City, Okla.	11/60	4/61	9.0%
San Antonio, Texas	5/61	11/60	8.2%
Milwaukee, Wisc.	11/61	11/58	5.3%
Dallas, Texas	11/60	3/61	4.8%
Kansas City, Mo.-Kans.	4/62	6/61	4.4%
Minneapolis-St. Paul, Minn.	10/61	8/58	4.0%
Ft. Worth, Texas	3/61	11/60	3.4%
Detroit, Mich.	10/61	4/57	3.3%
St. Louis, Mo.-Ill.	8/61	11/61	2.8%
Cleveland, Ohio	9/62	5/56	2.7%

Elimination of competition within the discount segment of department stores in all these areas was necessarily much greater than is indicated by the above market share statistics, which are based on total sales of all department stores.

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9. In addition to the foregoing metropolitan areas where Spartans and Atlantic were actually competing with each other, at the end of 1965 there was potential competition between them in at least 46 other cities in 24 States in which one or the other of these two chains had already entered a local market where the other was not yet established. Moreover, 18 of these 46 cities were located in 6 States where both of these dynamic, expanding firms have already entered at least one other market in that State, as shown by the following data:

State	City	Entrant	Date of initial entry into local market	Date of other chain's entry into State
Kansas	Wichita	Atlantic	8/61	9/62
Louisiana	New Orleans	Atlantic	8/62	9/61
Michigan	Grand Rapids	Atlantic	8/56	10/61
	Inkster	Atlantic	5/62	10/61
	Kalamazoo	Spartans	8/62	4/57
	Lansing	Spartans	5/62	4/57
	Muskegon	Spartans	11/62	4/57
	Pontiac	Spartans	5/52	4/57
	Warren	Atlantic	11/65	10/61
Ohio	Akron	Spartans	3/63	5/56
	Brooklyn	Atlantic	8/65	3/62
	Cuyahoga Falls	Spartans	8/63	5/56
	Youngstown	Atlantic	11/58	3/62
Tennessee	Knoxville	Atlantic	8/57	11/61
	Memphis	Atlantic	11/59	11/61
	Nashville	Spartans	11/61	8/57
Texas	Austin	Spartans	2/61	11/60
	Corpus Christi	Atlantic	3/62	11/60

10. At the time of its acquisition by Spartans Atlantic was engaged in commerce within the meaning of the Clayton Act and the Federal Trade Commission Act.

IV Spartans' Acquisition of Maro Industries, Inc.

11. Spartans' next major acquisition was the purchase of an important supplier of hosiery and miscellaneous apparel for its expanding retail outlets. On April 13, 1966, in exchange for stock worth about \$17 million, Spartans acquired all of the outstanding shares of Maro Industries, Inc. (hereinafter called "Maro"), a Delaware corporation organized in 1961 to take over a family proprietorship founded by one Max Rounick in 1912. During 1965 Maro's sales totaled well over \$30 million.

12. When it was acquired, Maro and its several subsidiaries were engaged in designing, manufacturing, importing and selling

a diversified line of moderately priced men's, women's and children's apparel consisting principally of hosiery (representing about 63% of its sales) but also including shirts, sweaters and other items of sportswear. Maro's production and imports were sold to and through 12,000 retail outlets throughout the United States, including Spartans, Atlantic, Korvette and other department stores. Maro ranked as one of the nation's largest suppliers of hosiery, making a total of \$22 million in sales in this line. Of this total about \$20 million were sales of men's finished seamless hosiery which amounted to a very substantial share of national sales of that product.

13. At the time of its acquisition by Spartans, Maro was engaged in commerce within the meaning of the Clayton Act and the Federal Trade Commission Act.

V Korvette

14. Respondent E. J. Korvette, Inc. (hereinafter referred to as "Korvette"), is a New York corporation with its principal office in New York, New York. Korvette is the nation's largest discount department store operation, with 1965 sales of about \$800 million and assets of about \$200 million. Starting in a small suite in midtown New York City in 1948, its promotion of nationally advertised products (particularly household appliances, cameras and similar equipment) at discount prices caught the public fancy and brought it phenomenal success. Since then it has expanded rapidly throughout the New York-Northeastern New Jersey Standard Consolidated Area and into other major population centers, simultaneously enlarging its lines of merchandise. By 1966 it had become a chain of 42 discount department stores and 59 food supermarkets in the metropolitan areas of New York, N.Y., Chicago, Ill., Detroit, Mich., Washington, D.C., Baltimore, Md., St. Louis, Mo., Philadelphia and Harrisburg, Pa., and Hartford and Bridgeport, Conn. Although its supermarket chain came into being largely as a result of its acquisition in early 1965 of Hill's Supermarkets, Inc., Korvette's dramatic expansion has thus far been achieved primarily through internal growth.

15. At all times relevant hereto, Korvette has been and is now engaged in commerce within the meaning of the Clayton Act and the Federal Trade Commission Act.

VI Korvette's Acquisition of Stock in Alexander's

16. In 1961 Korvette made an effort to acquire control of a

leading competitor among New York discount department stores, Alexander's Department Stores, Inc. (hereinafter referred to as "Alexander's"), a New York Corporation with its principal office in New York, New York. Although Alexander's majority stockholder, one George Farkas, resisted Korvette's effort at the time, Korvette has nevertheless retained a 43% interest in the voting common stock of Alexander's.

17. In the New York-Northeastern New Jersey SCA department store market, Alexander's, with current annual sales of about \$180 million a year, has a market share of about 7%. Its rank in this market is about 5th and the addition of its six huge discount department stores to the Korvette enterprise would alone increase Korvette's present market share from 13% to 20% and its market rank from 3rd to 2nd in the New York-Northeastern New Jersey (SCA) metropolitan department store market. Alexander's ranks high in sales nationwide among all discount department stores and conversion of Korvette's near-control into actual control of Alexander's would increase substantially Korvette's lead as the nation's largest discount department store operator.

18. At all times relevant hereto Alexander's has been and is now engaged in commerce within the meaning of the Clayton Act and the Federal Trade Commission Act.

VII The Spartans-Korvette Merger

19. The respective Boards of Directors of Spartans and Korvette on July 27, 1966, entered into a mutual agreement to merge Spartans into Korvette and rename Korvette "Spartans Industries, Inc." (hereinafter referred to as "the surviving corporation"), provided that the necessary two-thirds of the voting common stock of each corporation approve the proposed merger. Stockholder's meetings for this purpose are now scheduled for September 22, 1966.

20. If consummated, a Spartans-Korvette merger will result in the creation of a business entity with annual sales well over a billion dollars a year and assets over \$300 million. This proposed combination will embrace four of the largest and most dynamic discount department store chains in the United States, recently ranked by a leading trade publication as 1st (Korvette), 11th (Alexander's), 13th (Atlantic) and 17th (Spartans) among leading discounters carrying a full complement of soft and hard lines.

21. In seven major geographic areas where both Spartans and

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Korvette compete their combined local market shares of total 1965 department store sales and GMAF sales will range as follows (again excluding Alexander's sales) :

	Post-Merger Market Share (excluding Alexander's)	
	Department Stores	GMAF
<i>SCA's</i>		
New York-Northeastern New Jersey	13.1%	4.9%
Chicago-Northwestern Indiana	4.4%	1.9%
<i>SMSA's</i>		
Trenton, New Jersey	32.6%	13.7%
Philadelphia, Pa.-N.J.	13.4%	5.6%
Detroit, Michigan	7.4%	3.9%
St. Louis, Mo.-Ill.	6.4%	3.2%
Washington, D.C.-Md.-Va.	6.3%	3.2%

The surviving corporation's share of discount department store sales in each of these local areas will necessarily be much greater than its share of all department store sales in the same areas.

22. In these same seven metropolitan areas where Korvette and Spartans (plus Atlantic) both compete, the surviving corporation's local shares of the apparel and appliance lines of commerce, (without Alexander's, a big factor in the New York soft goods market) will range upward from 1.4% to 11.3% for apparel and from 2.1% to 9.6% for appliances :

	Post-Merger Market Share (excluding Alexander's)	
	Apparel	Appliances
<i>SCA's</i>		
New York-Northeastern New Jersey	2.9%	5.2%
Chicago-Northwestern Indiana	1.4%	2.1%
<i>SMSA's</i>		
Trenton, N.J.	11.3%	9.6%
Washington, D.C.-Md.-Va.	4.5%	7.3%
Philadelphia, Pa.-N.J.	4.3%	5.2%
Detroit, Michigan	4.0%	3.0%
St. Louis, Mo.-Ill.	3.6%	3.3%

23. Beyond the foregoing metropolitan areas where both Spartans and Korvette are already in actual competition there are very few, if any, metropolitan areas, at least east of the Rockies, which are not areas of potential competition between these two rapidly expanding chains of discount department stores. In addition to the metropolitan areas listed in Paragraph 21, Korvette

has now expanded into the vicinities of Hartford, Conn., Bridgeport, Conn., Harrisburg, Pa., and Baltimore, Md. In addition to the eleven metropolitan areas of actual Spartans-Atlantic competition listed in Paragraph 8 and eighteen other localities of especially likely potential competition between them listed in Paragraph 9—all of which are now also areas of potential if not actual competition between Korvette and Spartans—potential competition between Korvette and Spartans (including Atlantic) also exists in 20 other local markets already entered into by either Spartans or Atlantic, including: New Bedford, Mass., Providence, R.I., Rochester, N.Y., Wilmington, Del., Norfolk, Va., Charlotte, N.C., Columbia, S.C., Atlanta, Ga., Jacksonville, Fla., Birmingham and Mobile, Ala., Little Rock, Ark., Denver, Col., Cedar Rapids, Davenport and Des Moines, Iowa, Peoria and Rockford, Ill., and Mishawaka, Ind.

VIII Nature of Trade and Commerce

24. Department stores are the third most important group of retail stores in the United States, exceeded in sales volume only by food and automotive retail sales outlets. Their national sales volume of approximately \$20.5 billions in 1963, (estimated \$23.4 billion in 1965) represent about 8% of all retail sales in the country. Department stores constitute a line of commerce characterized particularly by relatively large retail stores which offer, under one roof, a relatively large group of commodities, including various combinations of soft goods and hard goods, within the defined limits set forth in Paragraph 1(b) above. Among the commodities usually sold by department stores, apparel and appliances are two very important lines. Nationwide, department stores account for approximately 40% of apparel sales and 25% of appliance sales. Department stores are well recognized by the consuming public and by the trade itself as a distinct line of commerce. In this line of commerce in 1965 Korvette, Alexander's, Spartans and Atlantic sales amounted to 2.7%, .8%, .5% and .6% respectively for a combined total of 4.6% of all national department store sales.

25. Department stores constitute approximately 37% of the broader GMAF stores market, including apparel, furniture and appliance stores as well as general merchandise, limited price variety and department stores. They altogether make up the second largest group of retailers in the United States, being exceeded

solely by retail food stores in sales volume. Total GMAF store sales of approximately \$55 billion in 1963, (projected to \$65.3 in 1965) represent approximately 23% of all retail sales in the United States. In this line of commerce in 1965 Korvette, Alexander's, Spartans and Atlantic sales amounted to 1.0%, .3%, .2% and .2% respectively for a combined total of 1.7% of all national GMAF store sales.

26. Discount department store operations constitute a popularly recognized submarket within the broader department stores market. It is a line of commerce which has emerged principally since World War II and now accounts for an increasingly large part of all department store sales in the United States, particularly in metropolitan areas. Discount department stores generally sell merchandise more cheaply, at a lower markup and with less services than do conventional department stores. Moreover, a principal and distinctive appeal of the post-war discount department store has been the sale of at least some widely-advertised national brands, often elsewhere sold at list prices, at discount prices, as distinguished from the sale of low-price private brand merchandise. The emergence of discount department store operations has had a peculiarly healthy influence on competition in the American retail market place. No other individual enterprise has played a more important role in this development than Korvette, the pioneer and still the undisputed national leader in the discount department store field. In addition to Korvette, there are few other discount department store chains that exceed in competitive importance Alexander's, Atlantic and Spartans, the 11th, 13th and 17th ranking businesses respectively among the nation's leading discounters carrying full lines of hard and soft goods, as alleged in Paragraph 20.

27. The major merchandise lines affected by this merger are also of great importance. The sale of apparel throughout the United States totals close to \$25 billion annually and accounts for about 9% of all retail sales. Nationwide appliance sales are something under \$6 billion annually and represent about 2% of all retail sales. The combination resulting from the merger of Korvette with Spartans-Atlantic would account for 1.2% of all apparel sales and 1.4% of all appliance sales in the United States.

28. The department store business has exhibited for some years past a dangerous trend toward concentration. Between 1948 and 1963, chains of 6 or more stores increased their share of all department stores sales from 45.8% to 80.8%. The obverse of

this trend was a decline in sales by the independents with 5 or fewer stores from 54.2% to 19.2% of the market. In absolute terms, while the sales of the chains rose from about \$4.9 billion to \$16.6 billion, independent's sales declined from \$5.8 billion to \$3.9 billion. During this same period the total number of establishments operated by department store chains (6 or more stores) increased from 1491 to 3157. The total number of establishments operated by the independents (5 or fewer stores) declined from 1089 in 1948 to 966 in 1958 but rose again to 1094 in 1963, mainly because of an influx of small companies operating discount department stores – the very development most likely to be injured and inhibited by merging Korvette with Spartans and Atlantic.

IX Competitive Effects of the Mergers

29. The effect of the acquisition and merger of Atlantic into Spartans has been or may be substantially to lessen competition and to tend to create a monopoly in the department store line of commerce, particularly the discount department store segment thereof; in the GMAF stores line of commerce; and in the retail sale of apparel and appliances; both nationally and in each of the various metropolitan areas where both competed or were likely potential competitors of one another, in the following ways, among others:

(a) by eliminating and preventing actual and potential competition between Spartans and Atlantic;

(b) by removing Atlantic as a significant, independent competitive force;

(c) by aiding Spartans to achieve what may be a decisive competitive advantage;

(d) by aggravating and encouraging others to aggravate the serious trend to ever greater concentration in the relevant lines of commerce.

30. The effect of the acquisition of Maro by Spartan has been or may be substantially to lessen competition and to tend to create a monopoly in the department store line of commerce, and particularly the discount department store segment thereof; in the GMAF stores line of commerce; in the retail sale of apparel and appliances; in the production and wholesale distribution of certain hosiery, shirts and other apparel lines of commerce; both nationally and in the various metropolitan areas where Spartans

now operates or is likely to operate, in the following ways, among others:

(a) by foreclosing manufacturing and wholesaling competitors of Maro from access to Spartans' retail outlets, either absolutely or on as favorable terms as may be available to Spartans itself, and

(b) by foreclosing retailing competitors of Spartans and/or Korvette from access to Maro's supplies, either absolutely or on as favorable terms as may be available to Spartans and/or Korvette.

31. The effect of Korvette's acquisition of 43% of the voting capital stock of Alexander's has been or may be substantially to lessen competition and to tend to create a monopoly in the department store line of commerce, particularly the discount department store segment thereof; in the GMAF stores line of commerce; and also in the retail sale of apparel and appliances; in the New York-Northern New Jersey metropolitan area (SCA), in the following ways, among others:

(a) by raising a probability that Korvette will eventually acquire operating control of Alexander's, thereby:

(a) eliminating and preventing actual and potential competition between Korvette and Alexander's;

(b) eliminating Alexander's as a significant independent competitive factor;

(c) aiding Korvette to achieve what may be a decisive competitive advantage;

(d) aggravating and encouraging others to aggravate a serious trend to ever greater concentration in the relevant lines of commerce; and

(b) by continually threatening Alexander's independence as a competitive factor in such markets.

32. The effect of a Spartans-Korvette merger, if consummated, may be substantially to lessen competition and tend to create a monopoly in the department store line of commerce, and particularly the discount department store segment thereof; in the GMAF stores line of commerce; and in the retail sale of apparel and appliances; both nationally and in each of the metropolitan areas where Spartans and Korvette and Spartans and Alexander's presently or potentially compete; and also in the nationwide production and wholesale distribution of certain hosiery, shirts/blouses and other apparel lines, in the following ways, among others:

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(a) by eliminating and preventing actual and potential competition between Spartans and Korvette and, thru Korvette's 43% ownership of Alexander's, between Spartans and Alexander's;

(b) by eliminating one of the two merging corporations as a significant independent competitive factor;

(c) by aiding the surviving corporation to achieve what may be a decisive competitive advantage;

(d) by foreclosing Spartans' manufacturing and wholesaling competitors from access to Korvette's and, potentially, from Alexander's retail outlets for the sale of certain hosiery, shirts/blouses, nightwear and other apparel lines, either absolutely or on as favorable terms as may be available to Spartans;

(e) by foreclosing Korvette's retail competitors from access to Spartans as a supplier of certain hosiery, shirts/blouses, nightwear and other apparel lines, either absolutely or on as favorable terms as may be available to Korvette;

(f) by aggravating and encouraging others to aggravate the serious trend to ever greater concentration in the relevant lines of commerce.

X Violations Charged

33. The effect of Spartans' acquisition of the capital stock of Atlantic, as alleged in Paragraph 7 herein, may be substantially to lessen competition or to tend to create a monopoly in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18, as more fully described in Paragraph 29 herein.

34. The effect of Spartans' acquisition of the capital stock of Maro, as alleged in Paragraph 11 herein, may be substantially to lessen competition or tend to create a monopoly in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18, as more fully described in Paragraph 30 herein.

35. The effect of Korvette's acquisition of 43% of the voting stock of Alexander's, as alleged in Paragraph 16 herein, may be substantially to lessen competition or to tend to create a monopoly in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18, as more fully described in Paragraph 31 herein.

36. The effect of the proposed merger of Spartans into Korvette, as alleged in Paragraph 19 herein, may be substantially to lessen competition or to tend to create a monopoly in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18, as more fully described in Paragraph 32 herein.

37. The contract, combination and agreement to effect the proposed mergers of Spartans into Korvette, as alleged in Paragraph 19, constitutes an incipient restraint of trade and incipient monopolization and thus an unfair method of competition and unfair act and practice in commerce within the meaning of Section 5(a) (i) of the Federal Trade Commission Act, 15 U.S.C. § 45(a) (i).

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondents named in the caption hereof, and the respondents 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 respondents with violation of the Federal Trade Commission Act and Section 7 of the Clayton Act, as amended; and

The respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents 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 respondents 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 respondents have violated said Acts, 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 E. J. Korvette, Inc. (hereinafter referred to as "Korvette"), 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 46th Street and the Avenue of the Americas, in the city of New York, State of New York.

Respondent Spartans Industries, Inc. (hereinafter referred to as "Spartans"), 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 1 West 34th Street, in the city of New York, State of New York.

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Respondents Korvette and Spartans propose to merge Spartans into Korvette and to change the name of Korvette to "Spartans Industries, Inc." (hereinafter referred to as the "surviving corporation").

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents, and the proceeding is in the public interest.

ORDER

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It is ordered, That the surviving corporation shall divest itself absolutely, in good faith, of all stock or any other interest, direct or indirect, through Schwabro Corporation or otherwise, in Alexander's Department Stores, Inc. ("Alexander's") and Retail Realty, Inc. ("Retail"), an affiliate of Alexander's.

A. The surviving corporation shall make every reasonable effort to effectuate such divestiture within a period of three (3) years from the effective date of this order: *Provided, however*, That if divestiture has not been effected within said three-year period, the Federal Trade Commission shall grant to the surviving corporation an opportunity to be heard before issuing any further order or orders which may be deemed appropriate. If at that time the surviving corporation shows that it has made a good faith effort and that failure to effectuate the divestiture within the three-year period cannot be attributed to delays by it, the Federal Trade Commission will grant an additional period of two years in which to complete the divestiture.

B. By such divestiture none of said interest in the stock of Alexander's and Retail shall be sold, directly or indirectly, to any person not approved as a purchaser by the Federal Trade Commission.

C. If the surviving corporation divests said interest in the stock of Alexander's and Retail to a new corporation, the stock of which is wholly owned by the surviving corporation, and if the surviving corporation then distributes all of the stock in said wholly owned new corporation to the stockholders of the surviving corporation, then paragraph I(B), of this order shall be inapplicable to the spin-off, and the following paragraph I(D) of this order shall take force and effect in its stead.

D. No person who is an officer or director of the surviving corporation shall at the same time be an officer or director of the new corporation. None of the following, or their legal representatives, shall own or control, directly or indirectly, more than one percent (1%) of the outstanding stock of the new corporation: (i) the Bassine Foundation, the Kardell Corporation, Charles C. Bassine and his family, as a group, (ii) Eugene Ferkauf and his family, as a group, (iii) Murray Sussman and his family, as a group, and (iv) any officer or director of the surviving corporation. Such persons or groups shall have nine (9) months following distribution of the stock of the new corporation within which to sell or dispose of any stock in the new corporation in excess of the foregoing one percent (1%) limitation, and the persons or groups named in (i), (ii) and (iii) above shall do so only to a person or persons approved by the Federal Trade Commission. As used herein the family of a person shall mean any descendant of the grandparents of such person or the spouse of any such descendant. If the surviving corporation shall apply to the Internal Revenue Service, prior to such distribution, for a tax ruling that the stockholders of the surviving corporation will not be required, notwithstanding the above provision of this order requiring the above named persons to sell or dispose of such stock, to recognize gain or loss with respect to such transaction under the Internal Revenue Code, and the Internal Revenue Service shall fail to issue a ruling to such effect within six (6) months after the date such application is made, then and in such event, the above named persons shall have three (3) months following the issuance of a ruling to such effect within which to sell or dispose of such stock but, until a ruling to such effect is issued, the above named persons shall not be required to sell or dispose of such stock in the new corporation, but such persons shall, so long as such persons own or control such shares, never cause or permit such shares to be voted at any meeting of the stockholders of the new corporation, except in a manner approved by the Federal Trade Commission, and shall forthwith deliver to the new corporation an instrument in writing, in a form approved by the Federal Trade Commission to this effect; *Provided further*, That, if and when such stock is sold or disposed of, such sale or disposition shall be to persons approved by the Federal Trade Commission.

E. If the surviving corporation transfers said interest in Alexander's and Retail to a new corporation, the stock of which is wholly owned by the surviving corporation, and if the surviving corporation then markets all of the stock in said new corporation in a separate public offering, then paragraphs I(B), I(C), and I(D) of this order shall be inapplicable, and the following paragraph I(F) shall take force and effect in its stead.

F. No person who is an officer or director of the surviving corporation, or who owns or controls, directly or indirectly, more than one per cent (1%) of the stock of the surviving corporation, shall be an officer or director of the new corporation described in paragraph I(E) of this order or shall own or control, directly or indirectly, more than one per cent (1%) of the stock of the new corporation described in paragraph I(E) of this order. For the purposes of this paragraph I(F) of this order, the stock ownership of any person either in the surviving corporation or the new corporation shall include the stock ownership of all members of his family. As used herein the family of a person shall mean any descendant of the grandparents of such person or the spouse of any such descendant.

G. If the surviving corporation is unable to dispose of said interest in Alexander's and Retail entirely for cash, nothing in this order shall be deemed to prohibit the surviving corporation from retaining, accepting and enforcing in good faith any security interest therein for the sole purpose of securing to the surviving corporation full payment of the price, with interest, at which the said interest is disposed of or sold: *Provided*, That such security arrangement shall be on terms and conditions approved by the Federal Trade Commission: *And further provided*, That if, after a good faith divestiture of the said interest, the buyer fails to perform his obligation and the surviving corporation regains ownership or control over said interest, the surviving corporation shall redinvest itself of said interest within one year in the same manner as provided for herein.

II

It is further ordered, That the surviving corporation shall divest itself, absolutely, in good faith, of all its interest in the 93 self-

service department stores now operated by Spartans and in the four self-service department stores presently planned to be opened by Spartans (hereafter the "acquired stores"), by divesting the acquired stores as one or more going businesses. The interest so divested shall include the right of at least one acquirer to use the name "Atlantic Thrift Center" in any retail business; and shall include the right of at least one acquirer to use the name "Spartans Department Store[s]" in any retail business for a period of two years but not in any corporate name. The surviving corporation shall not subsequent to the completion of such divestiture operate any retail stores as "Spartans" or "Atlantic Thrift Center" stores but the surviving corporation may, in any event, continue to use the word "Spartans" as part of its corporate title.

A. The surviving corporation shall have five (5) years from the effective date of this order to complete such divestiture. The surviving corporation shall make every reasonable effort to effectuate such divestiture by means of a transaction contemplated by paragraphs II(B) or II(E) of this order before it effectuates such divestiture by means of a transaction contemplated by paragraph II(C) of this order.

B. By such divestiture none of such interest in the acquired stores shall be sold, directly or indirectly, to any person not approved as a purchaser by the Federal Trade Commission.

C. If the surviving corporation divests said interest in the acquired stores to one or more new corporations, the stock of which is wholly owned by the surviving corporation, and if the surviving corporation then distributes all of the stock in said wholly owned new corporation[s] to the stockholders of the surviving corporation, then paragraph II(B) of this order shall be inapplicable to the spin-off, and the following paragraph II(D) of this order shall take force and effect in its stead.

D. No person who is an officer or director of the surviving corporation shall at the same time be an officer or director of the new corporation[s]. None of the following, or their legal representatives, shall own or control, directly or indirectly, more than one per cent (1%) of the outstanding stock of the new corporation: (i) the Bassine Foundation, the Kardell Corporation, Charles C. Bassine and his family, as a group, (ii) Eugene Ferkauf and his family, as a group,

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(iii) Murray Sussman and his family, as a group, and (iv) any officer or director of the surviving corporation. Such persons or groups shall have nine (9) months following distribution of the stock of the new corporation within which to sell or dispose of any stock in the new corporation in excess of the foregoing one per cent (1%) limitation, and the persons or groups named in (i), (ii), and (iii) above shall do so only to a person or persons approved by the Federal Trade Commission. As used herein the family of a person shall mean any descendant of the grandparents of such person or the spouse of any such descendant. If the surviving corporation shall apply to the Internal Revenue Service, prior to such distribution, for a tax ruling, that the stockholders of the surviving corporation will not be required, notwithstanding the above provision of this order requiring the above named persons to sell or dispose of such stock, to recognize gain or loss with respect to such transaction under the Internal Revenue Code, and the Internal Revenue Service shall fail to issue a ruling to such effect within six (6) months after the date such application is made, then and in such event, the above named persons shall have three (3) months following the issuance of a ruling to such effect within which to sell or dispose of such stock but, until a ruling to such effect is issued, the above named persons shall not be required to sell or dispose of such stock in the new corporation[s], but such persons shall, so long as such persons own or control such shares, never cause or permit such shares to be voted at any meeting of the stockholders of the new corporation, except in a manner approved by the Federal Trade Commission, and shall forthwith deliver to the new corporation an instrument in writing, in a form approved by the Federal Trade Commission to this effect: *Provided further*, That, if and when such stock is sold or disposed of, such sale or disposition shall be to persons approved by the Federal Trade Commission.

E. If the surviving corporation transfers said interest in the acquired stores to a new corporation[s], the stock of which is wholly owned by the surviving corporation, and if the surviving corporation then markets all of the stock in said new corporation[s] in a separate public offering, then paragraphs II(B), II(C), and II(D) of this order shall be in-

applicable, and the following paragraph II(F) shall take force and effect in its stead.

F. No person who is an officer or director of the surviving corporation, or who owns or controls, directly or indirectly, more than one per cent (1%) of the stock of the surviving corporation, shall be an officer or director of the new corporation[s] described in paragraph II(E) of this order or shall own or control, directly or indirectly, more than one per cent (1%) of the stock of the new corporation[s] described in paragraph II(E) of this order. For the purposes of this paragraph II(F) of this order, the stock ownership of any person either in the surviving corporation or the new corporation shall include the stock ownership of all members of his family. As used herein the family of a person shall mean any descendant of the grandparents of such person or the spouse of any such descendant.

G. If the surviving corporation is unable to dispose of said interest in the acquired stores entirely for cash, nothing in this order shall be deemed to prohibit the surviving corporation from retaining, accepting and enforcing in good faith any security interest therein for the sole purpose of securing to the surviving corporation full payment of the price, with interest, at which the said interest is disposed of or sold: *Provided*, That such security arrangement shall be on terms and conditions approved by the Federal Trade Commission: *And further provided*, That if, after a good faith divestiture of the said interest, the buyer fails to perform his obligation and the surviving corporation regains ownership or control over said interest, the surviving corporation shall redinvest itself of said interest within one year in the same manner as provided for herein.

H. Pending divestiture, the surviving corporation shall make every reasonable effort to maintain the acquired stores in good operating condition with such replacements and additions and such effective overall organization as may be necessary to divest them as viable competitive entities: *Provided*, *however*, That nothing contained herein shall be deemed to require the surviving corporation to continue to operate any store which is so unprofitable that sound business judgment requires its closing or which is rendered inoperative as a result of force majeure or other events beyond the control of the surviving corporation.

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III

It is further ordered, That no method, plan or agreement of divestiture to comply with this order shall be adopted or implemented save upon such terms and conditions as shall first be approved by the Federal Trade Commission.

IV

It is further ordered, That for a period of ten (10) years from the effective date of this order the surviving corporation shall cease and desist from acquiring, directly or indirectly, through subsidiaries or otherwise, any department store or other GMAF store located within the United States without the prior approval of the Federal Trade Commission. Nothing contained herein shall restrict the right of the surviving corporation to open additional department stores or GMAF stores at any time through lawful internal expansion.

V

It is further ordered, That for a period of ten (10) years from the effective date of this order the surviving corporation shall cease and desist from acquiring, directly or indirectly, through subsidiaries or otherwise, any enterprise manufacturing any apparel or hosiery, located in the United States, without the prior approval of the Federal Trade Commission. Nothing contained herein shall restrict the right of the surviving corporation to open apparel or hosiery manufacturing facilities at any time through lawful internal expansion.

VI

It is further ordered, That for a period of ten (10) years from the effective date of this order the surviving corporation shall cease and desist from acquiring, directly or indirectly, through subsidiaries or otherwise, any wholesaler or importer of any apparel or hosiery products, located in the United States, without the prior approval of the Federal Trade Commission. Nothing contained herein shall restrict the right of the surviving corporation to open any such wholesale or importing operation at any time through lawful internal expansion.

VII

It is further ordered, That after the effective date of this order

the surviving corporation shall cease and desist from supplying from its own manufacturing facilities (the "manufacturing facilities"), (i) during any calendar year for a period of ten years from the effective date of this order more than thirty-three and one-third per cent ($33\frac{1}{3}\%$) of the total dollar volume of the total requirements for such year of the 42 promotional department stores operated by Korvette at or immediately prior to the date of merger of Spartans into Korvette and of any other department stores or GMAF stores opened by the surviving corporation after the effective date of such merger ("the Korvette Stores") for any or all products (whether or not manufactured by Spartans, the surviving corporation or any affiliate during the calendar year 1966) includible in currently prevailing Census Five Digit S.I.C. (Standard Industrial Classification) product classifications in which Spartans, the surviving corporation or any affiliate manufactured products in 1966 ("the apparel and hosiery products"), and (ii) during any calendar year prior to the divestiture of the acquired stores a percentage of the total dollar volume of the total requirements of the acquired stores for such year for the apparel and hosiery products greater than the percentage of the total dollar volume of the total annual requirements of the acquired stores for the calendar year 1966 for the apparel and hosiery products, which shall be so supplied by Spartans, the surviving corporation and such affiliate(s) during the calendar year 1966: *Provided*, (A) That if in any calendar year, the surviving corporation's total sales of the apparel and hosiery products to all customers, including the Korvette stores and the acquired stores (whether or not the latter have yet been divested), fall below the total sales by Spartans, the surviving corporation or any affiliate of the apparel and hosiery products during the calendar year 1966, as adjusted by a percentage equal to the percentage change in the gross national product between the calendar year 1966 and the calendar year in question, then the surviving corporation may increase its supply of the apparel and hosiery products to the Korvette stores during the calendar year in question above the limitations hereinabove provided by an amount equal to the difference between the surviving corporation's total sales of the apparel and hosiery products in the year in question and the total sales of the apparel and hosiery products by Spartans, the surviving corporation and any affiliate during the calendar year 1966 as so adjusted: *And provided further, however*, (B) That this paragraph VII of this order shall be effective only for a period of

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ten (10) years following the effective date of this order and shall thereafter be deemed to have been vacated and shall be of no further force and effect, except that, upon application duly made upon written notice to the surviving corporation not less than six months nor more than twelve months prior to the date upon which this paragraph VII shall so be deemed to have been vacated and to be of no further force and effect, and after an opportunity to be heard, the Federal Trade Commission may enter a further order extending the effectiveness of this paragraph VII for an additional period of time not to exceed ten years upon a showing and determination that the effect of failing so to extend the period during which this paragraph VII shall be effective may be substantially to lessen competition or to tend to create a monopoly in any line of commerce in any section of the country: *And provided further, however,* (C) That in the event that the period of time during which this paragraph VII shall be effective is so extended by such further order of the Federal Trade Commission, the surviving corporation shall have all rights of appeal from or review of such further order as exist for appeal from or review of any order of the Federal Trade Commission entered under and pursuant to Section 7 of the Clayton Act and as exist for appeal from or review of any order of the Federal Trade Commission entered under and pursuant to Section 5 of the Federal Trade Commission Act: *Provided, however,* That during the pendency of any such application for such a further order and of any appeal from or review of any such further order, whether during or after the first ten (10) year period contemplated by this paragraph VII, the limitations of this section on the extent to which the surviving corporation may supply its own retail facilities shall continue in full force and effect.

VIII

It is further ordered, That the surviving corporation, within sixty (60) days from the effective date of this order, and every ninety (90) days thereafter until it has fully complied with the provisions of this order, submit in writing to the Federal Trade Commission a report setting forth in detail the manner and form in which it tends to comply, is complying, and/or has complied with this order. All compliance reports shall include, among other things which may from time to time be required:

A. The total quantity and dollar volume of the apparel

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and hosiery products, stated separately for each Five-digit S.I.C. product classification, (1) manufactured and shipped by the surviving corporation, (2) received from all sources by the Korvette Stores and by the acquired stores separately, and (3) supplied by it to the Korvette Stores and to the acquired stores separately; all for the preceding calendar quarter. Each fourth quarter report shall also include a report for the entire preceding calendar year, including specifically such data for the entire calendar year 1966.

B. A summary of all contacts and negotiations with all persons who have or may have an interest in acquiring ownership of and control over the stock and assets to be divested under this order, the identity of all such persons, copies of all written communications to or from such persons, copies of any proposed or executed sales contracts, copies of any internal corporate documents discussing such divestiture, and copies of any proposed plan of divestiture.

IX

As used in this order, the word "person" shall include persons, firms and corporations.

X

It is further ordered, That in the event after the date hereof 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 less restrictive than the comparable provisions of paragraph IV of this order, then the Federal Trade Commission shall, on application of the surviving corporation, 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 the surviving corporation in paragraph IV of this order into conformity with those imposed by such order.

XI

The effective date of this order shall be the date upon which Spartans is merged into Korvette.

Complaint

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IN THE MATTER OF

MIDWEST COLOR STUDIOS, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF
THE FEDERAL TRADE COMMISSION ACT*Docket C-1107. Complaint, Sept. 12, 1966—Decision, Sept. 12, 1966*

Consent order requiring a Chicago firm selling color photographs through door-to-door coupon salesmen to cease using false quality claims and other misrepresentations to sell its pictures.

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 Midwest Color Studios, Inc., a corporation, and Frank J. Blum and Morris Projansky, individually and as officers of said corporation, hereinafter referred to as respondents, have 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 Midwest Color Studios, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois, with its principal office and place of business located at 4707 North Broadway, in the city of Chicago, State of Illinois.

Respondents Frank J. Blum and Morris Projansky are officers of the corporate respondent. They formulate, direct and control the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. Their address is the same as that of the corporate respondent.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the offering for sale, sale and distribution of color photographs to the general public.

PAR. 3. In the course and conduct of their business, respondents now cause, and for some time last past have caused, their said products, when sold, to be shipped from their place of business in the State of Illinois to purchasers thereof located in various other