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Complaint

It is further ordered, That the respondent herein shall, within sixty (60) days after service upon him of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which he has complied with this order.

IN THE MATTER OF
ASSOCIATED MERCHANDISING CORPORATION ET AL.

ORDER OF DISMISSAL, ETC., IN REGARD TO THE ALLEGED
VIOLATION OF SEC. 2(f) OF THE CLAYTON ACT

Docket 8651. Complaint, Nov. 24, 1968—Decision, Dec. 18, 1968

Order dismissing a complaint which charged a New York City department store with knowingly inducing discriminatory prices from its suppliers in violation of Section 2(f) of the Clayton Act.

COMPLAINT

The Federal Trade Commission, having reason to believe that the party respondents named in the caption hereof and hereinafter more particularly designated and described have violated and are now violating the provisions of subsection (f) of Section 2 of the Clayton Act, as amended (U.S.C., Title 15, Section 13), hereby issues its complaint stating its charges with respect thereto as follows:

PARAGRAPH 1. Respondent Associated Merchandising Corporation, hereinafter referred to and designated as "respondent AMC," is a corporation, duly organized in 1939 and existing under and by virtue of the laws of the State of New York, with its office and principal place of business located at 1440 Broadway, New York, New York.

Respondent Aimcee Wholesale Corporation hereinafter referred to and designated as "respondent AWC," is a wholly owned subsidiary of respondent AMC, having been incorporated and organized under the laws of the State of New York in 1946, with its office and principal place of business located at 1440 Broadway, New York, New York.

PAR. 2. The following respondent corporations sometimes referred to as "respondent AMC shareholder stores" are engaged in the department and specialty store business and together wholly own respondent AMC.

Respondent Federated Department Stores, Inc., hereinafter referred to and designated as "respondent Federated," is a cor-

poration, duly organized in 1929 and existing 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 2, Ohio. Respondent Federated is engaged in the department and specialty store business and operates thirteen divisions. These divisions are:

Abraham & Straus, New York, New York.
Bloomingdale Bros., New York, New York.
Milwaukee Boston Store Co., Milwaukee, Wisconsin.
Burdine's, Miami, Florida.
Wm. Filene's Sons Company, Boston, Massachusetts.
Foley Brothers Dry Goods Company, Houston, Texas.
J. Goldsmith & Sons, Memphis, Tennessee.
The F. & R. Lazarus and Company, Columbus, Ohio.
The Rike-Kumler Company, Dayton, Ohio.
Sanger-Harris, Dallas, Texas.
The John Shillito Company, Cincinnati, Ohio.
Bullock's-Magnin Co. Division, Los Angeles and San Francisco, California.
Fedway, Cincinnati, Ohio.

Each of these divisions, with the exception of Fedway Stores, owns one share of Class A Stock and varying shares of Class B Stock of respondent AMC. Each of these divisions is engaged in the department or specialty store business in a given trade area and operates one or more stores. These divisions were formerly separate entities at the time they became shareholders of respondent AMC. Hereinafter they will be referred to as "AMC shareholder stores."

Respondent The J.L. Hudson Company is a corporation, duly organized and existing under and by virtue of the laws of the State of Michigan, with its office and principal place of business located at 1208 Woodward Avenue, Detroit, Michigan.

Respondent Carson Pirie Scott & Co. is a corporation, duly organized and existing under and by virtue of the laws of the State of Illinois, with its office and principal place of business located at 1 South State Street, Chicago, Illinois.

Respondent The Dayton Company is a corporation, duly organized and existing under and by virtue of the laws of the State of Minnesota, with its office and principal place of business located at 700 Nicollet Avenue, Minneapolis, Minnesota.

Respondent Rich's, Inc., is a corporation, duly organized and existing under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at Broad and Alabama Streets, Atlanta 2, Georgia.

Respondent Strawbridge & Clothier is a corporation, duly or-

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ganized and existing under and by virtue of the laws of the State of Pennsylvania, with its office and principal place of business located at 8th and Market Streets, Philadelphia, Pennsylvania.

Respondent The Emporium Capwell Company is a corporation, duly organized and existing under and by virtue of the laws of the State of California, with its office and principal place of business located at 835 Market Street, San Francisco, California.

Respondent Joseph Horne Company is a corporation, duly organized and existing under and by virtue of the laws of the State of Pennsylvania, with its office and principal place of business located at 501 Penn Avenue, Pittsburgh, Pennsylvania.

Respondent L.S. Ayres & Company is a corporation, duly organized and existing under and by virtue of the laws of the State of Indiana, with its office and principal place of business located at 1 West Washington Street, Indianapolis, Indiana.

Respondent The Higbee Company is a corporation, duly organized and existing under and by virtue of the laws of the State of Delaware, with its office and principal place of business located in the Higbee Building, Cleveland 13, Ohio.

Respondent Hutzler Brothers Co., is a corporation, duly organized and existing under and by virtue of the laws of the State of Maryland, with its office and principal place of business located at 212 North Howard Street, Baltimore, Maryland.

Respondent Thalhimer Bros., Inc., is a corporation, duly organized and existing under and by virtue of the laws of the State of Virginia, with its office and principal place of business located at 615 East Broad Street, Richmond, Virginia.

Respondent B. Forman Company is a corporation, duly organized and existing under and by virtue of the laws of the State of New York, with its office and principal place of business located at 46 Clinton Avenue, Rochester, New York.

Respondent Woodward & Lothrop, Inc., is a corporation, duly organized and existing under and by virtue of the laws of the District of Columbia, with its office and principal place of business located at 11th and F Streets, NW., Washington, D.C.

PAR. 3. Respondent AMC is an outgrowth of the Retail Research Association which was organized in 1916 by some of the present respondent AMC shareholder stores for the ostensible purpose of enabling the department stores operated by said shareholders to function more efficiently and to obtain and furnish information as to market conditions. While Retail Research Association was in its formative state, several of its directors saw

the possibility of expanding it into an organization through which the respondent AMC shareholder stores could buy their goods, wares and merchandise collectively. Therefore, in 1918, some of the present AMC shareholder stores organized respondent AMC.

PAR. 4. Respondent AMC was reorganized and reincorporated under the laws of the State of New York in 1939 and is wholly owned by the 25 AMC shareholder stores. Each of these 25 stores owns one share of Class A voting stock, the ownership of which is registered in the names of individuals who are the nominees of AMC shareholder stores with which they are affiliated. In addition, each of the 25 AMC shareholder stores owns a certain quantity of Class B non-voting stock which is distributed among the stores on the relative basis of each store's volume of retail sales at the time it first became a member.

PAR. 5. Respondent AMC shareholder stores paid for their shareholdings at the time they became shareholders. Respondent AMC operates on an expense budget, the monies for which are received from the stores on a service charge formula, which is based on sales made by the stores. While there are 25 shareholding stores, the service charge is computed on the basis of 26 stores, since two of the stores are treated separately for service charge purposes, but as one for shareholding purposes. The service charge is paid by the stores in monthly installments.

PAR. 6. The directors of respondent AMC are chosen by the Class A stockholders from among the Class A stockholders. Each director of respondent AMC is also an officer or director of the respective shareholder stores. The officers of respondent AMC are chosen by the directors of respondent AMC.

PAR. 7. Respondent AMC's principal functions are: purchasing goods, wares and merchandise of various suppliers through respondent AWC for the account of each AMC shareholder store; researching operating problems of department stores; and exploring the market for new merchandise and communicating their findings to the AMC shareholder stores. Prior to the creation of respondent AWC in 1946, respondent AMC acted as an agency or instrumentality by which the then shareholder stores knowingly induced and received illegal price discriminations from various suppliers.

PAR. 8. In 1946, following the entry of a cease and desist order by the Federal Trade Commission disposing of a complaint directed to charges of violation of subsection (f) of Section 2 of the amended Clayton Act, respondent AMC founded a wholly owned

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subsidiary corporation, respondent AWC. The individuals registered as stock owners of AWC are the nominees of respondent AMC, which is the beneficial owner of all of the issued capital stock. Respondent AWC's offices are located at the same address as the parent corporation, 1440 Broadway, New York City, New York.

PAR. 9. In 1946 the executive committee of respondent AMC passed the following resolution:

WHEREAS, the Associated Merchandising Corporation has recently caused the organization of the Aimcee Wholesale Corporation, and

WHEREAS, the Aimcee Wholesale Corporation is a wholly owned subsidiary and its aims and purposes are to enlarge upon and fulfill the activities of the Associated Merchandising Corporation,

NOW, THEREFORE, upon motion duly made, seconded and unanimously carried, it was

RESOLVED: That the Associated Merchandising Corporation be and hereby is authorized to and does guarantee the payment of any and all obligations of the Aimcee Wholesale Corporation; and it is

FURTHER RESOLVED: That any duly elected officer of the Associated Merchandising Corporation be and hereby is authorized to certify to any person, firm or corporation and to execute any and all papers required to be executed in connection with effecting the guaranty of the payment of any and all obligations of the Aimcee Wholesale Corporation.

This resolution remained in full force and effect from the date of its enactment until the latter part of 1963 when it was rescinded.

PAR. 10. Since 1946 and continuing throughout the first half of 1963, the principal officers and directors of respondent AMC were the principal officers and directors of respondent AWC. Respondent AMC, through common officers and directors, controls and formulates the policy for the daily operation of respondent AWC.

PAR. 11. Respondent AMC and respondent AMC shareholder stores maintain respondent AWC as an agency or instrumentality to effectuate the purchase of a variety of commodities from a large number of suppliers and manufacturers, commonly referred to as "resources."

PAR. 12. Respondent AMC and respondent AMC shareholder stores, acting directly and through the agency of respondent AWC, have purchased and now purchase the commodities of their resources in interstate commerce, as "commerce" is defined in the Clayton Act. Respondents cause the commodities purchased from their resources to be shipped and transported from the state of their origin or manufacture to other states of the United States in which the several respondent AMC shareholder stores are located.

PAR. 13. In the course and conduct of their business in commerce, respondent AMC and respondent AMC shareholder stores have, through the agency and instrumentality of respondent AWC, solicited and knowingly induced their resources to grant preferential prices to respondent AMC shareholder stores by selling their commodities to these stores at lower prices or with higher allowances or discounts than those which are granted by said resources to customers who are not AMC shareholders, but who are in competition with the stores of respondent AMC shareholder stores.

PAR. 14. Generally, the special and discriminatory allowances or discounts granted by various resources to or for the benefit of the AMC shareholder stores through AWC are not granted to competing department and specialty stores which are not AMC shareholder stores. Respondent AWC has a policy which prohibits it from making purchases for, or sales to retail or department stores which are located in the same cities as respondent AMC shareholder stores. As a result of this policy, sales by respondent AWC to retail or department stores who are not AMC shareholder stores have amounted to less than 10 percent of AWC's total sales for each year since 1946.

PAR. 15. Respondents have induced or received from their suppliers or resources, in the manner above described, favorable prices, discounts, allowances, rebates, terms and conditions of sale which they knew or should have known constituted discriminations in price prohibited by subsection (a) of Section 2 of the Clayton Act, as amended by the Robinson-Patman Act.

PAR. 16. The effect of the knowing inducement or receipt by respondents of the discriminations in price as above alleged has been and may be to substantially lessen, injure, destroy or prevent competition between respondent AMC shareholder stores and independent specialty, department or retail stores.

PAR. 17. The foregoing alleged acts and practices of respondents in knowingly inducing or receiving discriminations in price prohibited by subsection (a) of Section 2 of the Clayton Act, as amended by the Robinson-Patman Act, are in violation of subsection (f) of Section 2 of said Act.

ORDER WITHDRAWING THE COMPLAINT

In this proceeding, in which the complaint was issued more than four years ago, administrative hearings have not yet begun. Moreover, because of the pendency of collateral litigation arising out of attempted utilization of discovery procedures on both

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sides, it appears most unlikely that evidentiary hearings on the merits of the complaint could be commenced in the near future. In view of the present posture of the matter, continuation of the proceeding on its present course, with no prospect of a final determination for several years, would not be in the public interest. In order that the slate may be wiped clean and that any new proceeding should not become entangled in the procedural complications which have encumbered and delayed the disposition of this case,

It is ordered, That the complaint be, and it hereby is, withdrawn without prejudice.
