

Complaint

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COMPLAINT

The Federal Trade Commission having reason to believe that the party named in the caption hereof, and hereinafter more particularly designated and described, has violated and is now violating the provisions of subsections (d) and (e) of Section 2 of the Clayton Act, as amended by the Robinson-Patman Act, U.S.C. Title 15, Section 13, hereby issues its complaint, stating its charges with respect thereto as follows:

Count I

PARAGRAPH 1. Respondent, Evan-Picone, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New Jersey, with its principal place of business located at 1407 Broadway, New York, New York.

PAR. 2. Respondent is now and has been engaged in the manufacture, distribution and sale of women's dresses under the trade name of Evan-Picone. Respondent sells its products to retail specialty and department stores located throughout the United States. Respondent's total annual sales have been substantial, exceeding ten million dollars for the calendar year ending December 31, 1967, and eleven million dollars for the calendar year ending December 31, 1968.

PAR. 3. In the course and conduct of its business, respondent has engaged and is now engaging in commerce, as "commerce" is defined in the Clayton Act, as amended, in that respondent sells and causes its products to be transported from its place of business located in the State of New Jersey, to customers located in other States of the United States and in the District of Columbia. There has been at all times mentioned herein a continuous course of trade in commerce in said products across State lines between said respondent and its customers.

PAR. 4. In the course and conduct of its business in commerce, respondent paid or contracted for the payment of something of value to or for the benefit of some of its customers as compensation or in consideration for services or facilities furnished by or through such customers in connection with their offering for sale or sale of products sold to them by respondent, and such payments were not made available on proportionally equal terms to all other customers competing in the sale and distribution of respondent's products.

PAR. 5. Included among the payments alleged in Paragraph Four were credits, or sums of money, paid either directly or indirectly by way of discounts, allowances, rebates or deductions, as compensation

or in consideration for promotional services or facilities furnished by customers in connection with the offering for sale, or sale of respondent's products, including advertising in various forms, such as newspapers and catalogues.

Illustrative of such practices, but not limited thereto, respondent, during the period 1967 through 1968, made payments and allowances to various customers in various areas, including the cities of Washington, D.C.; Baltimore, Maryland; Philadelphia, Pennsylvania; New York, New York and the surrounding areas of each for advertising services furnished by such customers in connection with the sale or offering for sale of respondent's products as follows:

Washington, D.C. Area

Customer	Amount of allowance	
	1967	1968
J. Garfinckel.....	\$500.00	\$1,100.00
Woodward & Lothrop.....	875.00	

Baltimore, Maryland Area

Customer	Amount of allowance	
	1967	1968
Stewart & Co.....	\$100.00	\$603.00
Hamburgers.....	57.35	
Hochschild Kohn & Co.....		100.00

Philadelphia, Pennsylvania Area

Customer	Amount of allowance	
	1967	1968
Wanamaker's.....	\$1,323.00	\$450.00
Strawbridge & Clothier.....	1,768.40	
C. A. Rowell.....	250.00	
The Blum Store.....	200.00	

New York, New York Area

Customer	Amount of allowance	
	1967	1968
B. Altman.....	\$1,250.00	
A. Constable.....	25.00	
B. Sert.....	400.00	
Lord & Taylor.....	1,061.00	
Martins.....	410.00	
Plymouth.....	700.00	
Saks Fifth Avenue.....	5,794.00	\$8,200.00
Abercrombie & Fitch.....		950.00
Bergdorf Goodman.....		1,450.00
Bloomingdale's.....		2,772.00
Bonwit Teller.....		1,535.00
Wallach's.....		517.33

Respondent did not offer and otherwise make available such promotional allowances on proportionally equal terms to all other customers in the Washington, D.C.; Baltimore, Maryland; Philadelphia, Pennsylvania and New York, New York metropolitan areas, competing with those who received such allowances.

PAR. 6. The acts and practices of respondent as alleged above are in violation of subsection (d) of Section 2 of the Clayton Act, as amended by the Robinson-Patman Act (U.S.C. Title 15, Section 13).

Count II

PAR. 1. Paragraphs One through Three of Count I are hereby adopted and made part of this Count as fully as if herein set out verbatim.

PAR. 2. In the course and conduct of its business in commerce, respondent discriminated in favor of some purchasers against other purchasers of its products bought for resale by contracting to furnish or furnishing, or by contributing to the furnishing of services or facilities connected with the handling, sale or offering for sale of such products so purchased upon terms not accorded to all competing purchasers on proportionally equal terms.

PAR. 3. Included among the services or facilities furnished some purchasers, as alleged in Paragraph Two of Count II, is that of placing advertisements in nationally circulated publications with the listing in such advertisements of certain favored purchasers as retail outlets where the advertised products could be obtained.

Illustrative of such practices but not limited thereto, respondent, during the year of 1968 caused favored purchasers in the cities and surrounding areas of Washington, D.C.; Philadelphia, Pennsylvania; and New York, New York to be listed in nationally circulated publications as retail outlets at which respondents products were available as follows:

Washington, D.C. Trade Area

Customer	Publication	Date of advertisement
J. Garfinckel.....	N. Y. Times.....	2/18/68
	Harper's Bazaar.....	8/11/68
		3/68

Philadelphia, Pennsylvania Trade Area

Customer	Publication	Date of advertisement
J. Wanamaker.....	N. Y. Times.....	2/18/68

New York, New York Trade Area

Customer	Publication	Date of advertisement
Bonwit Teller.....	Vogue.....	1/15/68
Abercrombie & Fitch.....	Vogue.....	5/68
Abercrombie & Fitch.....	Madamoiselle.....	4/68
Bloomingdales.....	N. Y. Times.....	2/18/68
Bloomingdales.....	Harper's Bazaar.....	3/68
Bloomingdales.....	New Yorker.....	4/8/68
B. Altman.....	McCalls.....	2/23/68
Saks Fifth Avenue.....	Playbill.....	1/68
Saks Fifth Avenue.....	Playbill.....	6/68
Bergdorf Goodman.....	Madamoiselle.....	8/68

PAR. 4. During the same period of time, respondent sold its products to retailers competing with said favored purchasers and has not furnished or offered to furnish the services or facilities as set forth in Paragraph Three of Count II herein, to said unfavored retailers on proportionally equal terms.

PAR. 5. The acts and practices of respondent as alleged above violate subsection (e) of Section 2 of the Clayton Act, as amended (U.S.C. Title 15, Section 13).

DECISION AND ORDER

The Commission having heretofore determined to issue its complaint charging the respondent named in the caption hereof with violation of subsections (d) and (e) of Section 2 of the Clayton Act, as amended, and the respondent having been served with notice of said determination and with a copy of the complaint the Commission intended to issue, together with a proposed form of complaint; 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 complaint to issue herein, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondent that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's Rules; and

The Commission having considered the agreement and having accepted same, and the agreement containing consent order having thereupon been placed on the public record for a period of thirty (30) days, now in further conformity with the procedure prescribed in § 2.34(b) of its Rules, the Commission hereby issues its complaint in the form contemplated by said agreement, makes the following jurisdictional findings, and enters the following order:

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1. Respondent Evan-Picone, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New Jersey, with its office and principal place of business located at 1407 Broadway, in the city of New York, State of New York.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent.

ORDER

It is ordered, That the respondent Evan-Picone, Inc., a corporation, its officers, directors, agents, representatives and employees, directly, indirectly, or through any corporate or other device, in or in connection with the sale of wearing apparel products in commerce, as "commerce" is defined in the Clayton Act, as amended, do forthwith cease and desist from:

1. Paying or contracting for the payment of anything of value to, or for the benefit of, any customer of the respondent as compensation for or in consideration of advertising or promotional services, or any other service or facility furnished by or through such customer in connection with the handling, sale, or offering for sale of respondent's products, unless such payment or consideration is made available on proportionally equal terms to all other customers, including customers who do not purchase directly from respondent, who compete with such favored customer in the distribution or resale of such products.

2. Furnishing, contracting to furnish, or contributing to the furnishing of services or facilities in connection with the handling, processing, sale or offering for sale of respondent's products to any purchaser of such products bought for resale when such services or facilities are not accorded on proportionally equal terms to all other purchasers, including purchasers who do not purchase directly from respondent, who resell such products in competition with any purchaser who receives such services or facilities.

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

It is further ordered, That the respondent corporation shall forthwith distribute a copy of this order to each of its operating divisions.

It is further ordered, That the respondent notify the Commission

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Order

at least thirty (30) days prior to any proposed change in the corporate respondent such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change in the corporation which may affect compliance obligations arising out of the order.
