

IN THE MATTER OF
NATIONAL MODES, INC., ET AL.

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SUBSECTIONS C AND D OF SEC. 2 OF AN ACT OF CONGRESS APPROVED OCTOBER 15, 1914, AS AMENDED BY AN ACT APPROVED JUNE 19, 1936

Docket 5338. Complaint, June 23, 1945—Decision, Feb. 3, 1950

Where 11 concerns engaged in the the manufacture of women's apparel and in the sale thereof to some 14 retailers in large cities, and to numerous other such retailer clients of a purchasing corporation, which acted as their agent, under the direction of individual B and as associated with a company owned by said retailers and said B, in carrying out a group buying and promotion scheme or program, including national advertising, directed to the resale of women's apparel bearing trade-marks and trade names controlled by the corporation, such as "Caroline" and "Jeanne Barrie"; and which were agents or intermediaries acting in fact for such buyers, exclusively engaged in furnishing to them purchasing and other valuable services in return for certain contract service charges which the buyers obligated themselves to pay—

- (a) From June 19, 1936, until 1942, paid or granted allowances to aforesaid buyers, on sales for the buyers' own accounts, through (1) paying to said purchasing corporation sums which were equal or substantially equal to said contract service fees and were accepted in lieu thereof; (2) paying to an advertising agency of said corporations so-called advertising allowances credited to the corporations, which were not used, in whole or part, to advertise the apparel concerned, and which, to the extent not used, were equal or approximately equal to and in lieu of the direct payments above set forth, and similarly credited; and (3) granting discounts or allowances to such buyers which were substantially equal to the direct payments above set out to the then separately collected contract service fees; and after 1942, when such apparel was in short supply, continued such practices in connection with fewer, but many similar transactions; and

Where said intermediaries, namely, (1) said company, organized in 1925 by representatives of a group of women's apparel retailers and said B, to engage in the group buying and promotion of the resale of women's apparel under the aforesaid trade-marks and trade names, the stock of which was owned exclusively by such retailers and B; (2) said purchasing corporation, organized and controlled by B as an instrumentality for the accomplishment of the aforesaid purposes; and (3) B, himself, who was also a director and secretary of said first company and its exclusive agent in the consummation of its purposes—

- (b) Received and accepted from aforesaid sellers allowances or discounts upon purchases made from them in connection with which said intermediaries acted for their buyer-clients, and transmitted such allowances to the buyers in the form of services and benefits undertaken under the aforesaid contracts and arrangements; and,

Where some 14 retailers of women's wearing apparel, and numerous other similar retailer stockholders in said first company—

- (c) Received and accepted from sellers, as hereinbefore indicated, upon purchases for their own accounts, allowances or discounts in the form of credits, or services or benefits provided by said intermediaries, acting in fact for the buyers:

Held, That the paying and granting of discounts, or allowances in lieu thereof, by said sellers to said intermediaries and buyers; and the receiving and accepting thereof by said intermediaries and buyers; and the transmitting thereof by said intermediaries to said buyers; under the circumstances above set forth, constituted violations of subsection (c) of section 2 of the Clayton Act as amended by the Robinson-Patman Act.

In said proceeding in which various respondents, with the exception of three seller corporations which were legally dissolved prior to the issuance of the complaint, and Gimbel Bros. Inc., which stated that it had ceased to be a stockholder in respondent corporation prior to the issuance thereof, entered into a stipulation of the facts in support of and in opposition to the charges in count 1 of the complaint: the Commission did not dismiss the complaint against Gimbel Bros. as respondent in its capacity as a member of a class consisting of past, present, future stockholders in said intermediary respondents as represented by the named buyer-respondents, since said respondent's failure and refusal to enter into said stipulation as to the facts for the aforesaid reason did not constitute sufficient grounds for such a dismissal; but did dismiss it against Gimbel Bros. as a named respondent, since to continue the proceeding against it in that capacity would further extend the time in which all of the respondents might participate in the illegal practices.

As respects the charges in count 2 in the complaint that some of the respondents violated subsection (d) of section 2 of the Clayton Act, as amended—matters not embraced in the aforesaid stipulation which related exclusively to count 1—the record contained no evidence in support of or in opposition to said charges, and no findings with respect thereto were made.

Mr. Philip R. Layton and *Mr. Eldon P. Schrup* for the Commission.

Covington, Burling, Rublee, O'Brian & Shorb, of Washington, D. C., for National Modes, Inc., Arnold Constable & Co., Auerbach Co., Best's Apparel, Inc., Fowler, Dick & Walker, Hale Bros. Stores, Inc., A. Harris & Co., The Hecht Co., Popular Dry Goods Co., Dalton Co., King's, Inc., Ogus, Rabinovich & Ogus, Inc., and E. M. Scarbrough & Sons.

Spiro, Felstiner & Prager, of New York City, for National Modes Holding Corp. and John Block.

Marshall, Bratter, Seligson & Klein, of New York City, for H. Schreier Co., Junior Deb Coat & Suit Co., Inc., Morris W. Haft & Bros., Inc., Grossman & Spiegel, Inc., Charles Hymen, Inc., Junior Guild Frocks, Inc., Godett & Gross, Inc., Henry Rosenfeld, Inc., Henlo Sportswear, Ltd., Fred Perlberg, Inc., Shelton Coat Corp., Babs Junior, Inc., Shipman & Baker, Inc., and Rubin-Feld, Inc.

Brody & Brody, of Newark, N. J., for Eclipse Knitting Mills, Inc.

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Chadbourne, Wallace, Parke & Whiteside, of New York City, for Gimbel Bros., Inc.

Mann & Tyler, of Norfolk, Va., for Ames & Brownley, Inc.

Demov, Callahan & Morris, of New York City, also represented Morris W. Haft & Bros., Inc.

Mr. Otto A. Samuels, of New York City, also represented Shipman & Baker, Inc.

Buchter, Rathheim, Abrams & Holz, of New York City, also represented Ogus, Rabinovich & Ogus, Inc.

COMPLAINT

COUNT I

The Federal Trade Commission having reason to believe that the parties respondent named in the caption hereof and hereinafter more particularly designated and described, have since June 19, 1936, violated and are now violating the provisions of subsection (c), section 2 of the Clayton Act as amended by the Robinson-Patman Act, approved June 19, 1936 (U. S. C. title 15, sec. 13), hereby issues this complaint stating its charges with respect thereto as follows:

PARAGRAPH 1. Respondent National Modes, Inc., is a corporation organized and existing under and by virtue of the laws of the State of New York with its principal office and place of business at 130 Thirty-first Street, New York, N. Y.

PAR. 2. Respondent National Modes Holding Corp. is a corporation organized and existing under and by virtue of the laws of the State of New York with its principal office and place of business at 130 West Thirty-first Street, in the city of New York, State of New York.

PAR. 3. Respondent John Block, an individual, is a stockholder, officer, and director in each of the respondents National Modes, Inc., and National Modes Holding Corp. and has his principal office and place of business at 130 West Thirty-first Street, New York, N. Y., being the same address of respondents National Modes, Inc., and National Modes Holding Corp. He owns the majority of the capital stock of respondent National Modes Holding Corp. and is secretary and a director of respondent National Modes, Inc. He is president, treasurer, and a director of respondent National Modes Holding Corp. and is also a director of respondent Arnold Constable & Co., a holding corporation which owns and controls the retail dry goods store known as Arnold Constable of New York, N. Y. Said respondent John Block is the active business head of both respondents National Modes, Inc., and National Modes Holding Corp.

PAR. 4. Respondents Hyman Schreier and Ethel Schreier, his wife, are a partnership operating under the firm name of H. Schreier Co., having its principal office and place of business at 525 Seventh Avenue, New York, N. Y.

Respondent Junior Deb Coat & Suit Co., Inc., is a corporation organized and existing under and by virtue of the laws of the State of New York, with its principal office and place of business at 512 Seventh Avenue, New York, N. Y.

Respondent Eclipse Knitting Mills, Inc., is a corporation organized and existing under and by virtue of the laws of the State of New York with its principal office and place of business at 1410 Broadway, New York, N. Y.

Respondent Morris W. Haft & Bros., Inc., is a corporation organized and existing under and by virtue of the laws of the State of New York with its principal office and place of business at 500 Seventh Avenue, New York, N. Y.

Respondent Grossman & Spiegel, Inc., is a corporation organized and existing under and by virtue of the laws of the State of New York with its principal office and place of business at 512 Seventh Avenue, New York, N. Y.

Respondent Charles Hymen, Inc., is a corporation organized and existing under and by virtue of the laws of the State of Illinois with its principal office and place of business at 237 South Market Street, Chicago, Ill.

Respondent Junior Guild Frocks, Inc., is a corporation organized and existing under and by virtue of the laws of the State of Illinois with its principal office and place of business at 847 West Jackson Blvd., Chicago, Ill.

Respondent Godett & Gross, Inc., is a corporation organized and existing under and by virtue of the laws of the State of Illinois with its principal office and place of business at 337 South Franklin Street, Chicago, Ill.

Respondent Henry Rosenfeld, Inc., is a corporation organized and existing under and by virtue of the laws of the State of New York with its principal office and place of business at 498 Seventh Avenue, New York, N. Y.

Respondent Henlo Sportswear, Ltd., is a corporation organized and existing under and by virtue of the laws of the State of New York with its principal office and place of business at 498 Seventh Avenue, New York, N. Y.

Respondent Fred Perlberg, Inc., is a corporation organized and existing under and by virtue of the laws of the State of New York

with its principal office and place of business at 525 Seventh Avenue, New York, N. Y.

Respondent Shelton Coat Corp. is a corporation organized and existing under and by virtue of the laws of the State of New York with its principal office and place of business at 230 West Thirty-eighth Street, New York, N. Y.

Respondent Babs Junior, Inc., is a corporation organized and existing under and by virtue of the laws of the State of New York with its principal office and place of business at 498 Seventh Avenue, New York, N. Y.

Respondent Shipman & Baker, Inc., is a corporation organized and existing under and by virtue of the laws of the State of New York with its principal office and place of business at 500 Seventh Avenue, New York, N. Y.

Respondent Rubin-Feld, Inc., is a corporation organized and existing under and by virtue of the laws of the State of New York with its principal office and place of business located at 214 West Thirty-ninth Street, New York, N. Y.

The 16 respondents named in this paragraph are hereinafter designated and referred to as "seller-respondents." Said seller-respondents and each of them are, and since June 19, 1936, have been, engaged in the business of manufacturing, selling and distributing women's dresses and women's wearing apparel to numerous buyers, including the "buyer-respondents" hereinafter set out. Said seller-respondents are fairly typical and representative of a large number of manufacturers of women's dresses and women's wearing apparel engaged in the common practice of selling a substantial portion of their products to buyers who purchase through respondents National Modes, Inc., National Modes Holding Corp., and John Block, as intermediaries for buyers. Said seller-respondents are named as parties respondent both individually and as representatives of a group or class of a large number of manufacturers engaged in selling a substantial portion of their products through respondents National Modes, Inc., National Modes Holding Corp., and John Block to the buyer-respondents.

PAR. 5. Respondent Arnold Constable & Co. is a corporation organized and existing under and by virtue of the laws of the State of New York with its principal office and place of business at 453 Fifth Avenue, New York, N. Y.

Respondent Auerbach Co. is a corporation organized and existing under and by virtue of the laws of the State of Utah with its principal office and place of business at Salt Lake City, Utah.

Respondent Best's Apparel, Inc., is a corporation organized and existing under and by virtue of the laws of the State of Washington with its principal office and place of business at Fifth and Pine Streets, Seattle, Wash.

Respondent Fowler, Dick & Walker is a corporation organized and existing under and by virtue of the laws of the State of Pennsylvania with its principal office and place of business at Wilkes-Barre, Pa.

Respondent Gimbel Bros., Inc., is a corporation organized and existing under and by virtue of the laws of the State of New York with its principal office and place of business at Thirty-third and Broadway, New York, N. Y., with a branch located at Ninth and Market Streets, Philadelphia, Pa., which branch is a stockholder in National Modes, Inc.

Respondent Hale Bros. Stores, Inc., is a corporation organized and existing under and by virtue of the laws of the State of Delaware with its principal office and place of business at San Francisco, Calif.

Respondent A. Harris & Co. is a corporation organized and existing under and by virtue of the laws of the State of Texas with its principal office and place of business at Dallas, Tex.

Respondent The Hecht Co. is a corporation organized and existing under and by virtue of the laws of the State of Maryland with its principal office and place of business at Seventh and F Streets NW., Washington, D. C.

Respondent Popular Dry Goods Co. is a corporation organized and existing under and by virtue of the laws of the State of Texas with its principal office and place of business at El Paso, Tex.

Respondent Ames & Brownley, Inc., is a corporation organized and existing under and by virtue of the laws of the State of Virginia with its principal office and place of business at Norfolk, Va.

Respondent Dalton Co. is a corporation organized and existing under and by virtue of the laws of the State of Louisiana with its principal office and place of business at Baton Rouge, La.

Respondent King's Inc., is a corporation organized and existing under and by virtue of the laws of the State of Tennessee with its principal office and place of business at Johnson City, Tenn.

Respondent Ogus, Rabinovich & Ogus, Inc., is a corporation organized and existing under and by virtue of the laws of the State of New York with its principal office and place of business at 2 Park Avenue, New York, N. Y.

Respondents J. W. Scarbrough and L. Scarbrough are a partnership operating under the firm name of E. M. Scarbrough & Sons, having

its principal office and place of business at Congress Avenue and Sixth Street, Austin, Tex.

The 15 respondents named in this paragraph are hereinafter designated and referred to as "buyer-respondents." Each of said buyer-respondents is engaged in the retail dry goods business, and is a stockholder in the respondent National Modes, Inc. Said buyer-respondents are named as parties respondent both individually and as representatives of a group or class of a large number of retail dry goods concerns, each of whom is likewise a stockholder in respondent National Modes, Inc.

PAR. 6. National Modes, Inc., was organized in August of 1925 by respondent John Block and a group of retail dry goods stores, among which are the buyer-respondents named in paragraph 5, to create and promote the sale of "style" women's dresses and women's wearing apparel under brands, labels, and trade-marks owned and controlled by such retailers and respondent National Modes, Inc., the principal trade-marked labels being "Carolyn" and "Jeanne Barrie."

Respondents, National Modes, Inc., National Modes Holding Corp. and John Block are now, and since the time of the incorporation and organization of National Modes, Inc., and National Modes Holding Corp. have been, engaged in the business of providing purchasing and other services for the buyer-respondents named in paragraph 5 hereof and for other buyers.

In the course and conduct of their business respondents National Modes, Inc., National Modes Holding Corp. and John Block receive orders for women's dresses and women's wearing apparel from the buyer-respondents and other buyers to purchase such products as agents for the buyers and transmit such orders to the seller-respondents and other sellers. As a result of the transmission of said orders by said buyers to respondents National Modes, Inc., National Modes Holding Corp. and John Block, the placing of same by said respondents for or in behalf of said buyers, and the acceptance of said orders by said seller-respondents and other sellers, women's dresses and women's wearing apparel are by each of said seller-respondents and other sellers shipped from the State in which such merchandise is located at the time of sale into and through the various other States of the United States directly to each of said buyer-respondents and to other buyers.

In the course of the buying and selling transactions above set out said seller-respondents since June 19, 1936, have transmitted, paid, and delivered, and do transmit, pay, and deliver to respondents National Modes, Inc., National Modes Holding Corp., and John Block

