

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA, :
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 Plaintiff, :
 : Civil Action No. 74-4391
 v. :
 : Filed: October 7, 1974
 SAKS & COMPANY; :
 BERGDORF GOODMAN INC.; and :
 GENESCO INC., :
 :
 Defendants. :

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COMPLAINT

The United States of America, plaintiff, by its attorneys, acting under the direction of the Attorney General of the United States, brings this civil action to obtain equitable relief against the above-named defendants, and complains and alleges as follows:

I

JURISDICTION AND VENUE

1. This complaint is filed under Section 4 of the Act of Congress of July 2, 1890, as amended (15 U.S.C. § 4), commonly known as the Sherman Act, in order to prevent and restrain the continuing violation by the defendants, as hereinafter alleged, of Section 1 of the Sherman Act (15 U.S.C. § 1).

2. Each of the defendants is found and transacts business within the Southern District of New York.

II

THE DEFENDANTS

3. Saks & Company (hereinafter Saks) is made a defendant herein. Saks is a corporation organized and existing under the laws of the State of New York with its principal place of business in New York, New York. It is a wholly-owned subsidiary of Gimbel Bros., Inc. and operates

under the trade name Saks Fifth Avenue. During the period of time covered by this complaint, Saks has been engaged in the retailing of women's clothing in the New York Metropolitan Area.

4. Bergdorf Goodman Inc. (hereinafter Bergdorf) is made a defendant herein. Bergdorf is a corporation organized and existing under the laws of the State of New York with its principal place of business in New York, New York. During the period of time covered by this complaint, Bergdorf has been engaged in the retailing of women's clothing in the New York Metropolitan Area.

5. Genesco Inc. is made a defendant herein. Genesco Inc. is a corporation organized and existing under the laws of the State of Tennessee with its principal place of business in Nashville, Tennessee. From 1966 to the present, Genesco Inc., through its division Bonwit Teller, has been engaged in the retailing of women's clothing in the New York Metropolitan Area.

III

CO-CONSPIRATORS

6. Various other corporations, firms and individuals, including companies engaged in the retailing of women's clothing in the New York Metropolitan Area, not made defendants in this complaint, have participated as co-conspirators in the violation alleged and have performed acts and made statements in furtherance thereof.

IV

DEFINITIONS

As used herein, the term:

7. "Women's clothing" shall mean ready to wear items of women's outerwear such as dresses, suits and coats, but excluding shoes, millinery and accessories.

8. "New York Metropolitan Area" shall mean New York City and the counties of Nassau, Suffolk, Westchester, and Rockland in the State of New York and the counties of Bergen, Passaic, Essex, Morris, Union, Hudson, Middlesex, and Somerset in the State of New Jersey.

V

TRADE AND COMMERCE

9. The defendant companies are among the largest retailers specializing in the sale of women's clothing in the New York Metropolitan Area. They have an image, recognized in the women's clothing industry and by the consumer, of selling fashionable women's clothing of quality fabrics and favored styling. The defendant companies confine their sales to women's clothing and other soft goods and are not as diversified as department stores which also sell housewares, home furnishings and myriad other items. In 1972, they accounted for approximately \$70 million in retail sales of women's clothing in the New York Metropolitan Area.

10. In the retailing of women's clothing, the difference between the cost price of an item and its retail price is known as the "markup." Retailers maintain "markup lists" consisting of a column showing each price level at which the retailer purchases merchandise and a corresponding column showing the retail price to be charged for items purchased at such cost level. These "markup lists" are used by the retailers to price each item for sale to the consumer.

11. The defendant companies and other fashion retailers purchase women's clothing at wholesale from manufacturers which specialize in the production of such clothing. Some of these manufacturers have suggested retail prices which

they either publish in a list or orally suggest to their retailer customers.

12. During the period of time covered by this complaint, substantial quantities of women's clothing sold by the defendant and co-conspirator companies in the New York Metropolitan Area have been manufactured outside the state in which such clothing is sold and have been shipped regularly in interstate commerce. In addition, substantial quantities of women's clothing sold by the defendant and co-conspirator companies in the New York Metropolitan Area are purchased by customers residing outside the state in which such clothing is sold, and therefore travels across state lines to points of ultimate destination.

VI

VIOLATION ALLEGED

13. Since at least as early as the late 1960's, the exact date being to the plaintiff unknown, and continuing thereafter up to and including the date of the filing of this complaint, the defendants and co-conspirators have been engaged in a combination and conspiracy in unreasonable restraint of the aforesaid interstate trade and commerce in women's clothing in violation of Section 1 of the Sherman Act, as amended (15 U.S.C. § 1).

14. The aforesaid combination and conspiracy has consisted of a continuing agreement, understanding and concert of action among the defendants and co-conspirators, the substantial term of which has been to raise, fix, stabilize and maintain retail prices of women's clothing.

15. For the purpose of forming and effectuating the aforesaid combination and conspiracy, the defendants and co-conspirators have done those things which they combined and conspired to do, including among others:

- (a) establishing uniform retail prices through the adoption of uniform markup lists, and maintaining adherence to such prices;
- (b) inducing manufacturers to use such uniform retail prices as manufacturers' suggested retail prices and to withhold women's clothing from retailers who sell below such uniform retail prices; and
- (c) establishing dates for the beginning of clearance periods during which such uniform retail prices are reduced.

VII

EFFECTS

16. The aforesaid combination and conspiracy has had the following effects, among others:

- (a) prices of women's clothing have been raised, fixed, stabilized and maintained at artificial and noncompetitive levels;
- (b) customers of the defendant and co-conspirator retailers have been deprived of free and open competition in the sale of women's clothing; and
- (c) competition in the sale of women's clothing among defendant and co-conspirator retailers has been restrained.

PRAYER

WHEREFORE, plaintiff prays:

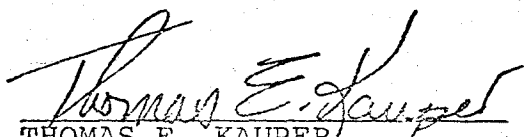
1. That the Court adjudge and decree that the defendants have engaged in an unlawful combination and conspiracy in restraint of the aforesaid interstate trade and commerce in violation of Section 1 of the Sherman Act (15 U.S.C. § 1).

2. That each of the defendants, its subsidiaries, successors, transferees, assigns, and the respective officers,

directors, partners, agents and employees thereof, and all other persons acting or claiming to act on its behalf, be enjoined and restrained from in any manner directly or indirectly, continuing, maintaining or renewing the combination and conspiracy hereinbefore alleged, or from engaging in any other combination, conspiracy, contract, agreement, understanding or concert of action having a similar purpose or effect, and from adopting or following any practice, plan, program or device having a similar purpose or effect.

3. That the plaintiff have such other, further, general and different relief as the case may require and the Court may deem just and proper under the circumstances.

4. That the plaintiff recover its taxable costs.


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