

Syllabus

. IN THE MATTER OF

REEVES PARVIN & COMPANY, TRI-STATE BROKERAGE
COMPANY, FRANCIS B. REEVES, JR., ET AL.

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

Docket 3129. Complaint, May 15, 1937¹—Decision, Apr. 15, 1939

Where six corporations engaged in manufacture of various commodities, and in sale and shipment thereof to a wholesale grocer and to other purchasers, and individual engaged as broker in sale of such commodities in their behalf, and others engaged in such sale, and as thus engaged in competition one with the other; in selling such products—

- (a) Granted, paid, transmitted and delivered so-called brokerage fees or commissions ranging from 1 to 5 percent of the amount of each purchase on sales on orders placed with such various sellers by such wholesale grocer through the medium of a certain brokerage company, which (1) was the corporate affiliate of such wholesale grocer, (2) was under identical control with it through common stock ownership and control by the president and active chief executive of both, (3) distributed, in the form of dividends, all the profits resulting from the receipt of such so-called brokerage fees or commissions, to said president, by whom such amounts, in accordance with agreement theretofore entered into, were transmitted and paid over to said wholesale grocer, and, (4) in connection with such various transactions, acted for and in behalf of said wholesale grocer only, and under its control, and did not represent said sellers as their agent or act for or in their behalf or under their control, or render or intend to render them any services in connection with sale of commodities to such wholesale grocer; and

Where said wholesale grocer, engaged in active competition with other wholesale grocers doing business in territories served by it, and purchasing commodities for resale to the retail trade from manufacturers, producers, and distributors located in various States, and the aforesaid individual, its president and chief executive officer, as of said brokerage company, and latter itself—

- (b) Accepted and received, on purchases on orders placed by said wholesale grocer through such brokerage company and buyer-controlled intermediary, so-called brokerage fees or commissions, as above set forth, in connection with which said brokerage company neither rendered nor intended to render to sellers any services in connection with sale of such commodities to said wholesale grocer, and in connection with which said individual and common officer and stockholder was possessed of no knowledge with regard to customer or consumer demand, requirements of said wholesale grocer or obligations thereof to such various sellers, while acting in his capacity as president and chief executive officer of said wholesale grocer, which was not equally available to him while acting in his capacity as such

¹ Complaint published as amended by order of the Commission amending complaint and record, dated September 15, 1937.

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president and executive officer of said brokerage concern, and who performed no function, while acting in latter capacity, which could not have been performed by him in his other capacity, and in connection with which various sales, as aforesaid, no selling services were rendered to such sellers by either of said concerns or their agents, and in connection with which purchases any benefits which might accrue to the sellers from negotiations or dealings involved were wholly incidental to the purchasing services rendered said wholesale grocer by its said brokerage company:

Held, That such payment and transmittal of brokerage fees or commissions in substantial amounts, as above set forth, and receipt thereof, as aforesaid, upon such purchases, constituted violation of paragraph (c) of Section 2 of the Clayton Act, as amended.

Before *Mr. John W. Norwood*, trial examiner.

Mr. J. J. Smith, Jr. for the Commission.

Saylor, Slocum & Ferguson, of Philadelphia, Pa., and *Mr. Louis A. Spiess* and *Mr. John Walsh*, of Washington, D. C., for *Reeves, Parvin & Co.*, *Tri-State Brokerage Co.* and *Francis B. Reeves, Jr.*

Spencer, Ogden, Spencer & Gandy, of Rochester, N. Y., for *W. N. Clark Co.*

Price Brothers, of New York City, for *Natural Sugars, Inc.*

Parker & Dawson, of New York City, for *Nectar Syrup Corporation*.

Mr. James A. McAllister, of Cambridge, Md., for *Phillips Sales Co., Inc.*

COMPLAINT ¹

Pursuant to the provisions of an Act of Congress, approved October 15, 1914, entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," as amended by an Act of Congress, approved June 19, 1936, entitled "An Act to amend Section 2 of the Act entitled 'An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes', approved October 15, 1914, as amended (U. S. C. title 15, sec. 13), and for other purposes," the Federal Trade Commission, having reason to believe that the respondents named above in the caption hereof and hereinafter more particularly designated and described, have violated and are now violating the provisions of subsection (c) of Section 2 of said act as amended, hereby issues its complaint against the said respondents, stating its charges in that respect as follows:

¹ Complaint published as amended as of date of issuance by "Order Amending Complaint and Record" dated September 15, 1937, so as to name as respondent, Robert W. Mairs, individually, trading and doing business as Robert W. Mairs & Co. instead of Robert W. Mairs & Co., a corporation and to name as respondent in lieu of Phillips Packing Co., Inc., Phillips Sales Co., Inc. and to make corresponding changes thus made necessary in par. 4 of the complaint.

PARAGRAPH 1. Respondent, Reeves, Parvin & Co., is a corporation organized and existing under and by virtue of the laws of the State of Delaware, with an office and principal place of business located at 400 Chestnut Street in the city of Philadelphia, State of Pennsylvania.

PAR. 2. The respondents, Tri-State Brokerage Co., is a corporation 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 400 Chestnut Street, in the city of Philadelphia, State of Pennsylvania.

PAR. 3. Respondent, Francis B. Reeves, Jr., is a resident of the city of Philadelphia, State of Pennsylvania, with an office and place of business located at 400 Chestnut Street in said city and State.

PAR. 4. Respondent, W. N. Clark Co., is a corporation organized and existing under and by virtue of the laws of the State of New York, with an office and principal place of business located at 333 Hollenbeck Street, in the city of Rochester, State of New York. Respondent Robert W. Mairs is a resident of the city of Baltimore, State of Maryland, engaged in trading and doing business as Robert W. Mairs & Co. and maintains his office and principal place of business at 211 East Pleasant Street, in the city of Baltimore, State of Maryland. Respondent, Martin Gillet & Co., is a corporation organized and existing under and by virtue of the laws of the State of Maryland, with an office and principal place of business located at Lombard and Cheapside Streets, in the city of Baltimore, State of Maryland. Respondent, H. J. McGrath Co., is a corporation organized and existing under and by virtue of the laws of the State of Maryland, with an office and principal place of business located at Lakewood Avenue, in the city of Baltimore, State of Maryland. Respondent, Natural Sugars, Inc., is a corporation organized and existing under and by virtue of the laws of the State of New York, with an office and principal place of business located at 120 Wall Street in the city and State of New York. Respondent, Nectar Syrup Corporation, is a corporation organized and existing under and by virtue of the laws of the State of New York, with an office and principal place of business located at 228 West Broadway in the city and State of New York. Respondent, Phillips Sales Co., Inc., is a corporation organized and existing under and by virtue of the laws of the State of Maryland, with an office and principal place of business located in the city of Cambridge, State of Maryland.

PAR. 5. Said respondent, Reeves, Parvin & Co., named in paragraph 1 above, is engaged in the business of purchasing commodities, particularly food stuffs, usually from sellers, including respondent sellers, named in paragraph 4 above, located in states other than the state

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in which said respondent, Reeves, Parvin & Co., is located, and of reselling such commodities to its customers.

Said respondent, Reeves, Parvin & Co., is a Delaware corporation, the majority of whose capital stock is owned and controlled by its President and a member of its board of directors, said respondent, Francis B. Reeves, Jr., named in paragraph 3 above, who also is president and a member of the board of directors of said respondent, Tri-State Brokerage Co., named in paragraph 2 above, a Delaware Corporation, all of whose capital stock is owned and controlled by said respondent, Francis B. Reeves, Jr. All directors of said respondent, Tri-State Brokerage Co., are also directors of said respondent, Reeves, Parvin & Co.; and the officers and employees of said respondent, Tri-State Brokerage Co., are also officers or employees of said respondent, Reeves, Parvin & Co. Said respondent, Tri-State Brokerage Co., occupies and uses one office which is also occupied and used by said respondent, Reeves, Parvin & Co.

The ownership, control and management of said respondent, Tri-State Brokerage Co., is identified and affiliated with the ownership, control and management of said respondent, Reeves, Parvin & Co., through the person and active management of said respondent, Francis B. Reeves, Jr., who is president, director and majority stockholder of both of said respondent corporations, Reeves, Parvin & Co., and Tri-State Brokerage Co.

Said respondent, Reeves, Parvin & Co., a Delaware corporation, being engaged in the wholesale grocery business, maintains an office and principal place of business in the city of Philadelphia, State of Pennsylvania, and, while not engaging in merchandising in said city of Philadelphia, does maintain warehouses and sales organizations in the City of Wilmington, in the State of Delaware and in the cities of Huntingdon, Allentown, and Altoona, in the State of Pennsylvania.

PAR. 6. Said respondent, Tri-State Brokerage Co., named in paragraph 2 above, is the purchasing agency and corporate affiliate of said respondent, Reeves, Parvin & Co., and is engaged in the business of providing purchasing services for said respondent, Reeves, Parvin & Co.; approximately 96 percent of all business done by said respondent, Tri-State Brokerage Co., between June 19, 1936 and January 1, 1937, was involved in orders for the purchase of commodities placed by said respondent, Reeves, Parvin & Co.

Said respondent, Tri-State Brokerage Co., in the course and conduct of its business, pursues a policy and practice of purchasing commodities, particularly food stuffs, chiefly for said respondent, Reeves, Parvin & Co., from numerous and diverse manufacturers, processors,

distributors and producers, located in the several States of the United States, certain of whom are named in paragraph 4 above and joined as respondents herein, and herein more particularly described and referred to for convenience as respondent sellers.

In the course and conduct of its business as aforesaid, said respondent, Tri-State Brokerage Co., represents and acts in fact for and in behalf, and is subject to the control of said respondent, Reeves, Parvin & Co. in the purchase of commodities, particularly food stuffs, which are transported between and among the several States, whenever specifically requested so to do, and in the manner and form specified, directed and ordered by said respondent, Reeves, Parvin & Co.

PAR. 7. Said respondent, Francis B. Reeves, Jr., named in paragraph 3 above, is now, and has been since June 19, 1936, president, director and majority stockholder in both of said respondent corporations, Reeves, Parvin & Co. and Tri-State Brokerage Co., owning and controlling 55 percent of all the capital stock of said respondent, Reeves, Parvin & Co. and all of the capital stock of said respondent, Tri-State Brokerage Co., and taking an active part in the management of the business of both of said respondents, Reeves, Parvin & Co., and Tri-State Brokerage Co.

PAR. 8. Said respondent sellers, named in paragraph 4 above, are typical and representative members of a group or class of manufacturers, processors, producers, and distributors, too numerous to be individually named herein as respondents, and who are engaged in the common practice of selling some of their commodities, in interstate commerce, through said respondent, Tri-State Brokerage Co., to said respondent, Reeves, Parvin & Co.

PAR. 9. Said respondent, Tri-State Brokerage Co., in the course and conduct of its said business, and while acting in fact for and in behalf, and subject to the control, of said respondent, Reeves, Parvin & Co., transmits and executes orders for the purchase of commodities, particularly foodstuffs, for said respondent, Reeves, Parvin & Co., with said respondent sellers named in paragraph 4 above, and other sellers, who are, in most cases, located in states of the United States other than the state in which said respondents, Reeves, Parvin & Co., and Tri-State Brokerage Co., are located. As a result of the transmission and execution of said orders by said respondent, Tri-State Brokerage Co., while acting in fact for and in behalf, and subject to the control, of said respondent, Reeves, Parvin & Co., and the acceptance and fulfilment of said orders by said respondent sellers, named in paragraph 4 above, and other sellers, commodities, particularly foodstuffs, are, in the case of each

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such order and in a continuous succession of such orders, sold, transported and delivered by one or more of said respondent sellers, and other sellers, to said respondent, Reeves, Parvin & Co. By such means, and in the manner stated, all of said respondents cause to be transported, from one state to another, goods and commodities to be resold to the customers of said respondent, Reeves, Parvin & Co. or to consumers. In the operations and activities hereinabove referred to, each and every one of said respondents is engaged, in interstate commerce, in practices which contemplate and result in the transportation of goods and commodities in interstate commerce and in making sales or purchases which directly affect and bring about interstate commerce.

PAR. 10. In the course and conduct of the buying and selling transactions hereinabove referred to, resulting in the transportation and delivery of goods and commodities from one or more of said respondent sellers, and other sellers, to said respondent, Reeves, Parvin & Co., by means of the purchasing services of said respondent, Tri-State Brokerage Co., as agent and representative for said respondent, Reeves, Parvin & Co., acting in fact for and in behalf, and subject to the control, of said respondent, Reeves, Parvin & Co., said respondent sellers, and other sellers, have transmitted and paid, or have allowed and credited, and do transmit and pay, or do allow and credit, to said respondent, Tri-State Brokerage Co., so-called brokerage fees or commissions, the amount of which varies, but which amount is usually between 1 percent and 5 percent of the quoted price agreed upon by the buyer, said respondent, Reeves, Parvin & Co. and by each individual respondent seller named in paragraph 4 above and other individual sellers, in each such individual transaction of sale and purchase of goods and commodities in interstate commerce. Said respondent, Tri-State Brokerage Co., has and does accept and receive, hold and retain, such so-called brokerage fees and commissions for the use and benefit of said respondent, Reeves, Parvin & Co., and has transmitted and paid over and does transmit and pay over such so-called brokerage fees and commissions so received to said respondent, Reeves, Parvin & Co., by means of dividend payments to said respondent, Francis B. Reeves, Jr., as the owner of all its capital stock, who likewise owns a majority of the capital stock of the said respondent, Reeves, Parvin & Co., and which dividend payments, representing in fact, so-called brokerage fees and commissions received by said respondent, Tri-State Brokerage Co., in the manner hereinabove described, minus the expense of operation, are or have been directly transmitted and paid over, or allowed and credited, by said respondent, Francis B. Reeves, Jr., to the said respondent, Reeves, Parvin & Co.

PAR. 11. In the aforesaid transactions, said respondent, Tri-State Brokerage Co., is the agent and representative, acting in fact for and in behalf, and subject to the control, of said respondent, Reeves, Parvin & Co. In fact, such so-called brokerage fees or commissions are not transmitted and paid over, nor allowed and credited, by said respondent sellers, and other sellers, to said respondent, Tri-State Brokerage Co., nor are the same accepted, received, held or retained by the said respondent, Tri-State Brokerage Co., as payment for any services rendered to said respondent sellers, or other sellers, by said respondent, Tri-State Brokerage Co., but on the contrary such so-called brokerage fees and commissions are so paid and received for the use and benefit of said respondent, Reeves, Parvin & Co. No services are or have been rendered to said respondent sellers, or other sellers, by said respondent, Reeves, Parvin & Co., or by said agent, said respondent, Tri-State Brokerage Co., in connection with the sale or purchase in interstate commerce of goods, wares or merchandise, for which said so-called brokerage fees or commissions are or have been paid or received. The transmission and payment or allowance and credit, of said so-called brokerage fees and commissions, by said respondent sellers, and other sellers, to said respondent, Reeves, Parvin & Co., through said agent and representative, said respondent, Tri-State Brokerage Co., and said respondent, Francis B. Reeves, Jr., and the receipt and acceptance of such so-called brokerage fees and commissions by said respondent, Reeves, Parvin & Co. from said respondent sellers, or other sellers, through said agent and representative, said respondent, Tri-State Brokerage Co., and said respondent, Francis B. Reeves, Jr., in the manner and under the circumstance hereinabove set forth, is in violation of the provisions of subsection (c) of Section 2 of the act described in the preamble hereof. The acceptance and receipt of said so-called brokerage fees and commissions by said respondent, Tri-State Brokerage Co., while acting in fact for and in behalf, and subject to the control, of said respondent, Reeves, Parvin & Co., from said respondent sellers or other sellers, and the acceptance and receipt thereof for the use and benefit of said respondent, Reeves, Parvin & Co., is in violation of the terms of said statute.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an Act of Congress approved October 15, 1914 (the Clayton Act), as amended by an Act of Congress approved June 19, 1936 (the Robinson-Patman Act), the Federal Trade Commission on the 15th day of May 1937, issued and served its complaint in this proceeding upon the respondents named above, charging

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them with violation of Section 2, subsection (c) of the said act. After the issuance of said complaint and the filing of respondents' answers thereto, testimony and other evidence in support of the allegations of said complaint were introduced by Mr. J. J. Smith, Jr., attorney for the Commission, and testimony and other evidence in opposition to the allegations of the complaint were introduced by Mr. Kenneth Souser and Mr. Louis A. Spiess for Reeves Parvin & Co., Tri-State Brokerage Co., and Francis B. Reeves, Jr.; Mr. Howard C. Spencer, of Spencer, Ogden & Spencer, for W. N. Clark Co.; Mr. Leroy L. Wallace and Mr. James A. McAllister for Phillips Packing Co., Inc., and Phillips Sales Co., Inc.; Mr. Reed B. Dawson, of Parker & Dawson, for Nectar Syrup Corporation; and by Mr. Eric Jacobsen for Martin Gillet & Co., of which he is vice president. Said evidence was adduced at hearings held by John W. Norwood, a trial examiner of the Commission theretofore duly designated by it, and said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, the proceeding regularly came up for final hearing before the Commission on the said complaint, the answers thereto, testimony and other evidence, briefs in support of the complaint and in opposition thereto and the oral argument of counsel aforesaid; and the Commission, having duly considered the matter, and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, Reeves Parvin & Co. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware. It is engaged in the wholesale grocery business, maintaining its executive office in Philadelphia, Pa., and branch warehouses which are in charge of, and operated by, employees at Wilmington, Delaware, and Huntingdon, Altoona and Allentown, Pa. With the exception of some buying done by respondent Francis B. Reeves, Jr., from its executive office in Philadelphia, Pa., at the request of respondent Reeves Parvin & Co.'s branch managers, all of its merchandising activities are conducted from the aforesaid branch warehouses by the respective employees in charge thereof. The employees in charge of the warehouses of Reeves Parvin & Co. are known as branch managers; they are authorized to buy merchandise for resale from the respective warehouses operated by them and they do the greater part of such buying, being allowed considerable latitude in conducting the company's business in their territory. Each of said branch managers owns a small block of stock in the respondent

Reeves Parvin & Co., but they are employed on a month to month basis and are subject to discharge at any time.

The officers of Reeves Parvin & Co. are: Francis B. Reeves, Jr., president, John White, vice president, Urban Doolittle, secretary, H. R. Boynton, treasurer, F. X. Wood, assistant secretary and treasurer. The directors of Reeves Parvin & Co. are: Francis B. Reeves, Jr., Johnson Reeves, F. X. Wood, H. R. Boynton, and others. Reeves Parvin & Co. has outstanding 5,753 shares of stock, 3,218 shares of which are owned by the respondent Francis B. Reeves, Jr.

PAR. 2. Respondent Tri-State Brokerage Co. is a corporation under the laws of the State of Delaware, with principal office and place of business at 400 Chestnut Street, Philadelphia, Pa. It conducts a limited brokerage business in groceries, chiefly foodstuffs, for which it places orders with and solicits orders for various sellers, producers of said commodities, some of whom are named and reported herein as respondent sellers. The greater part of this respondent's business comes to it through merchandise purchased through it by respondent Reeves, Parvin & Co., but, acting in the capacity of broker, this respondent does sell some outside concerns the products of manufacturers and producers. The respondent brokerage company is a corporate affiliate and under identical control with respondent Reeves, Parvin & Co., as shown below. In the conduct of its business this respondent causes goods on its sales and orders to be sold and shipped from the States of New York, Maryland, and elsewhere, into the States of Delaware and Pennsylvania in competition with other brokers and purchasers likewise engaged in commerce.

The officers of Tri-State Brokerage Co. are: Francis B. Reeves, Jr., president, Johnson Reeves, vice president, F. X. Wood, secretary and treasurer.

The aforesaid individuals also comprise the board of directors of the Tri-State Brokerage Co.

PAR. 3. Respondent Francis B. Reeves, Jr., an individual, is a resident of Blue Bell, Montgomery County, Pa., with office and place of business at 400 Chestnut Street, Philadelphia, Pa. He is president, director, and majority stockholder of Reeves, Parvin & Co., and is the active chief executive thereof, having the responsibilities, powers, and duties of active management and supervision of the business of the corporation and the duty of seeing that all orders and resolutions of the board of directors are carried into effect. Through the Tri-State Brokerage Co. and the Reeves Parvin & Co. this respondent is actively engaged in the purchase, sale and shipment of merchandise from States of sale and origin to other States of the United States as shown herein.

This respondent is also president, director, and owner of all of the outstanding stock of respondent Tri-State Brokerage Co., and is its active chief executive and the manager of its business, giving his personal attention to the orders of Reeves, Parvin & Co.

PAR. 4. The respondent, W. N. Clark Co., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, having an office and principal place of business located at 333 Hollenbeck Street, Rochester, N. Y.

The respondent, Robert W. Mairs, is an individual doing business under the name and style of Robert W. Mairs & Co., with his office and principal place of business in Baltimore, Md.

The respondent, Martin Gillet & Co., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Maryland, having an office and principal place of business at Lombard and Cheapside Streets, Baltimore, Md.

The respondent, H. J. McGrath Co., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Maryland, having an office and principal place of business located on Lakewood Avenue, Baltimore, Md.

The respondent, Natural Sugars, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, having an office and principal place of business located at 120 Wall Street, New York, N. Y.

The respondent, Nectar Syrup Corporation, is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, having an office and principal place of business located at 228 West Broadway, New York, N. Y.

The respondent Phillips Sales Co., Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Maryland, having an office and principal place of business located in Cambridge, Md.

With the exception of the respondent, Robert W. Mairs, each of the respondents, hereinabove named in this paragraph, is engaged in manufacturing various commodities which they sell and ship to respondent Reeves, Parvin & Co., and to other purchasers thereof, each seller competing with other manufacturers and sellers of similar commodities in endeavoring to sell and ship the same to respondent Reeves, Parvin & Co., and to competitors of respondent Reeves, Parvin & Co.

The respondent, Robert W. Mairs, is a field broker engaged in selling commodities to respondent Reeves, Parvin & Co., and to other purchasers thereof, as the agent and on behalf of the manufacturers and sellers of said commodities, competing with other field brokers

in endeavoring to sell commodities to respondent Reeves, Parvin & Co., and to competitors of said respondent Reeves, Parvin & Co.

The respondents hereinabove named in this paragraph will herein-after be referred to as seller respondents.

PAR. 5. The respondent, Reeves, Parvin & Co., is engaged in active competition with other wholesale grocers doing business in the territories served by it. In the course and conduct of their respective businesses, respondent Reeves, Parvin & Co., and its competitors, purchase commodities for resale to the retail trade from manufacturers, producers and distributors located in various States of the United States, and cause such commodities to be shipped from the various States in which they are manufactured and produced to the respective places of business of the respondent Reeves, Parvin & Co., and its competitors located in States other than the State of origin of such commodities.

PAR. 6. Since June 19, 1936, in the course and conduct of the wholesale grocery business of the respondent Reeves, Parvin & Co., as described in paragraph 5 hereof, orders for a substantial quantity of its stock requirements have been; and are, placed by the respondent Reeves, Parvin & Co., with the seller respondents and other sellers through the medium of the respondent Tri-State Brokerage Co., pursuant to which orders commodities have been, and are, sold and shipped in interstate commerce as aforesaid by the seller respondents and other sellers to the respondent Reeves, Parvin & Co. On such transactions of purchase and sale between the respondent Reeves, Parvin & Co., and the seller respondents and other sellers since June 19, 1936, the seller respondents and other sellers have granted, paid, transmitted and delivered, and do grant, pay, transmit and deliver, to the respondent Tri-State Brokerage Co., so-called brokerage fees or commissions ranging from 1 to 5 percent of the amount of each purchase.

During the period from 1933 to May 15, 1937, the date of the issuance of the complaint herein, the seller respondents and other sellers paid and transmitted to the respondent Tri-State Brokerage Co., so-called brokerage fees or commissions upon the purchases made through it by respondent Reeves, Parvin & Co., and by other wholesalers, as follows:

	On Reeves Parvin & Co.'s purchases	On purchases of other wholesalers	Total
1933-----	\$4,570	\$7,384	\$11,954
1934-----	5,236	2,822	8,058
1935-----	5,458	897	6,355
1936-----	8,779	598	9,377
1937-----	3,381	115	3,496

The so-called brokerage fees or commissions paid and transmitted by the seller respondents and other sellers to the respondent Tri-State Brokerage Co. upon the purchases made through it by the respondent Reeves Parvin & Co. since June 19, 1936, comprise over 95 percent of the total income of the respondent Tri-State Brokerage Co.

Where considerations of price and quality are equal, the respondent Reeves Parvin & Co. purchases through respondent Tri-State Brokerage Co., and its branch managers from time to time recommend respondent Tri-State Brokerage Co. to sellers and sellers to respondent Tri-State Brokerage Co., with the view to the formation of a brokerage connection between them, as a result of which, respondent Tri-State Brokerage Co. has obtained such connections with sellers who have paid brokerage to it upon the purchases of respondent Reeves Parvin & Co.

PAR. 7. All of the profits of the respondent Tri-State Brokerage Co. resulting from the receipt of the so-called brokerage fees or commissions paid by the seller respondents and other sellers upon the purchases made through it by the respondent Reeves Parvin & Co., as aforesaid, are periodically distributed to respondent Francis B. Reeves, Jr., in the form of dividends.

All dividends declared and paid to respondent Francis B. Reeves, Jr., by respondent Tri-State Brokerage Co. from the profits earned, as aforesaid, are transmitted and paid over to respondent Reeves Parvin & Co. in accordance with an agreement entered into between respondents Francis B. Reeves, Jr., and Reeves Parvin & Co. at the time of the organization of respondent Tri-State Brokerage Co., which agreement is evidenced by the following excerpt from the minutes of a meeting held by the executive committee of respondent Reeves Parvin & Co. on May 14, 1928:

It was resolved that Reeves, Parvin & Co. take over the interests of Francis B. Reeves, Jr., in the merchandise brokerage business which he proposes to conduct under the name of Reeves, Davis Co., and therefore for this purpose, they appropriate the sum of \$5,000 to be paid to the Reeves, Davis Co. as and when required, on which interest of 6 percent is to be paid before any profits are provided, and the profits due Francis B. Reeves, Jr., from the Reeves, Davis Co. to accrue to Reeves, Parvin & Co. and to be paid over to Reeves, Parvin & Co. as (and) when received by Francis B. Reeves, Jr.

Dividends declared and paid by respondent Tri-State Brokerage Co. to respondent Francis B. Reeves, Jr., and by him transmitted and paid over to respondent Reeves Parvin & Co. as aforesaid during the period from the year 1933 to May 15, 1937, are as follows:

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1933 -----	\$3, 000
1934 -----	2, 000
1935 -----	2, 500
1936 -----	5, 500
1937 -----	1, 500

PAR. 8. The function of, and the services performed by, brokers representing sellers in connection with the sale of commodities is to find customers for sellers and, acting under and subject to the control of sellers, to sell commodities to those customers for and on behalf of sellers and as the agents of said sellers; the brokers' function in such cases is a selling function, and the service rendered by them is a selling service rendered to sellers.

PAR. 9. In all of the transactions of purchase and sale of commodities, as set forth in paragraph 6 hereof, wherein the respondent Tri-State Brokerage Co. purchases commodities for the respondent Reeves Parvin & Co. or negotiates or deals with the seller respondents and other sellers in connection with the purchase of commodities by, or the sale thereof to, the respondent Reeves Parvin & Co., the respondent Tri-State Brokerage Co. acts for and in behalf of the respondent Reeves Parvin & Co. only and under its control, and in such transactions the respondent Tri-State Brokerage Co. does not intend to, and in fact does not, represent the seller respondents or other sellers as their agent or act for or in behalf or under the control of the seller respondents or other sellers, and does not intend to, and in fact does not, render to the seller respondents or other sellers any services in connection with the sale of commodities to the respondent Reeves Parvin & Co.

In all such transactions since June 19, 1936, wherein the respondent Tri-State Brokerage Co. has purchased commodities for the respondent Reeves Parvin & Co. or negotiated or dealt with the seller respondents and other sellers in connection with the purchase of commodities by, or the sale thereof to, the respondent Reeves Parvin & Co., the following circumstances and conditions have existed:

Respondent, Francis B. Reeves, Jr., has been president and chief executive officer of, has owned the controlling interest in, and has been vested with the general and active management of the business of, each of the respondents Reeves Parvin & Co. and Tri-State Brokerage Co.

All of the officers and directors of the respondent Tri-State Brokerage Co. have owned stock in the respondent Reeves Parvin & Co.

Respondent, Francis B. Reeves, Jr., has been paid a substantial salary by the respondent Reeves Parvin & Co. and has been allowed a drawing account by the respondent Tri-State Brokerage Co.

The respondents, Reeves Parvin & Co. and Tri-State Brokerage Co. have jointly occupied the same office and have used the same telephone, have shared the services of a stenographer, the books of the two companies have been kept by the same person, and the letter-heads used by both companies in their regular business with sellers and others bear the same city, street and room number.

There has been no knowledge with regard to customer or consumer demand, requirements of the respondent Reeves Parvin & Co., or obligations of the respondent Reeves Parvin & Co. to the seller respondents or other sellers, available to the respondent Francis B. Reeves, Jr., while acting in his capacity as president and chief executive officer of the respondent Reeves Parvin & Co. which has not been equally available to him while acting in his capacity as president and chief executive officer of the respondent Tri-State Brokerage Co.

There has been no function performed by the respondent Francis B. Reeves, Jr., while acting in his capacity as president and chief executive officer of the respondent Tri-State Brokerage Co. which could not have been performed by him in his capacity as president and chief executive officer of the respondent Reeves Parvin & Co.

PAR. 10. No selling services in connection with the purchase of commodities by, or the sale thereof to the respondent Reeves Parvin & Co. are intended to be, or are, rendered to the seller respondents or other sellers by the respondents Tri-State Brokerage or Reeves Parvin & Co. or by any agent, representative or employee of either of said respondents.

In all matters and transactions wherein the respondent Tri-State Brokerage Co. negotiates or deals with sellers in connection with the purchase of commodities by, or the sale thereof to, the respondent Reeves Parvin & Co., the respondent Tri-State Brokerage Co. is the agent and representative of the respondent Reeves, Parvin & Co., and acts in fact for and in behalf, and is subject to the direct control, of the respondent Reeves Parvin & Co. and any benefits which may accrue to the seller respondents or other sellers from such negotiations or dealings are benefits wholly incidental to the purchasing services rendered the respondent Reeves Parvin & Co. by the respondent Tri-State Brokerage Co.

PAR. 11. The seller respondents are fairly representative of a large group of sellers engaged in manufacturing various commodities which they sell and ship in interstate commerce as aforesaid to the respondent Reeves Parvin & Co. and to other purchasers thereof. Each of the seller respondents actively competes with other manufacturers and sellers of similar commodities in soliciting sales for,

and in selling and shipping, the same in interstate commerce as aforesaid to the respondent Reeves Parvin & Co., and to competitors of respondent Reeves Parvin & Co.

CONCLUSION

The Commission concludes as follows with regard to the application of paragraph (c) of Section 2 of the Clayton Act, as amended by the Robinson-Patman Act, to the facts heretofore found:

The respondent, Tri-State Brokerage Co., is a buyer-controlled intermediary within the meaning of said paragraph of said Act, and in all transactions wherein the respondent Tri-State Brokerage Co., purchases commodities for the respondent Reeves Parvin & Co. or negotiates or deals with sellers in connection with the purchase of commodities by, or the sale thereof to, the respondent, Reeves Parvin & Co., the respondent Tri-State Brokerage Co. acts for and in behalf, and subject to the direct control, of the respondent Reeves Parvin & Co. within the meaning of said paragraph of said act.

Since June 19, 1936, the seller respondents and other sellers have paid and transmitted so-called brokerage fees or commissions in substantial amounts to, and the same have been accepted and received by, the respondent Tri-State Brokerage Co. upon the purchases of the respondent Reeves Parvin & Co.

The payment of brokerage to, and the receipt thereof by, a buyer on his own purchases, whether the same is paid directly to the buyer or transmitted to him through an intermediary set up or employed by him for that purpose, is a practice prescribed by said paragraph of said act.

Since June 19, 1936, respondent Tri-State Brokerage Co. has paid dividends in substantial amounts to respondent Francis B. Reeves, Jr., from the profits made from the payment of the so-called brokerage fees and commissions paid and delivered to respondent Tri-State Brokerage Co. by respondent sellers and other sellers upon the purchases of the respondent Reeves Parvin & Co., all of which dividends have been transmitted and paid over by respondent Francis B. Reeves, Jr. to respondent Reeves Parvin & Co.

No selling services whatsoever were in fact rendered to sellers in connection with the purchases of the respondent Reeves Parvin & Co. by either the respondent Tri-State Brokerage Co. or the respondent Francis B. Reeves, Jr., or the respondent Reeves Parvin & Co., within the meaning of said paragraph of said act.

Since June 19, 1936, the seller respondents and other sellers have paid and transmitted so-called brokerage fees or commissions in substantial amounts to, and the same have been received by, the respondent

ent, Tri-State Brokerage Co., the respondent, Reeves Parvin & Co. and the respondent Francis B. Reeves, Jr., upon the purchases of the respondent Reeves Parvin & Co. in violation of paragraph (c) of Section 2 of an Act of Congress approved October 15, 1914, entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes" as amended by an Act of Congress approved June 19, 1936, entitled "An Act to amend Section 2 of the Act entitled 'An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes,' approved October 15, 1914, as amended (U. S. C., title 15, sec. 13), and for other purposes."

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answers of the parties respondent named in the caption hereof, testimony and other evidence, taken before John W. Norwood, an examiner for the Commission theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto, briefs filed in support of said complaint and in opposition thereto and the oral arguments of J. J. Smith, Jr., counsel for the Commission, and the several counsel for the respondents, and the Commission having made its findings as to the facts and its conclusion that the said parties respondent have violated, and are now violating, the provisions of an act of Congress approved October 15, 1914, entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes" as amended by an Act of Congress approved June 19, 1936, entitled "An Act to amend Section 2 of the Act entitled 'An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes,' approved October 15, 1914, as amended (U. S. C. title 15, sec. 13), and for other purposes":

It is ordered, That the respondents W. N. Clark Co., Martin Gillet & Co., H. J. McGrath Co., Natural Sugars, Inc., Nectar Syrup Corporation, Phillips Sales Co., Inc., their respective officers, representatives, agents, and employees, and Robert W. Mairs, in connection with the sale of commodities in interstate commerce to the respondent, Reeves, Parvin & Co., do forthwith cease and desist from granting, paying, transmitting, and delivering to any one of the respondents Tri-State Brokerage Co., Reeves Parvin & Co., their respective officers, representatives, agents, and employees, and Francis B. Reeves, Jr., either in his capacity as an officer, director or employee of either of said respondents Tri-State Brokerage Co. or Reeves Parvin & Co., or in his indi-

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Order

vidual capacity, in connection with the purchases of commodities in interstate commerce by the respondent Reeves Parvin & Co., do forthwith cease and desist from accepting or receiving from sellers any fees or commissions as brokerage or allowance in lieu thereof.

It is further ordered, That the respondents Reeves Parvin & Co., Tri-State Brokerage Co., their respective officers, representatives, agents, and employees, and the respondent Francis B. Reeves, Jr., either in his capacity as an officer, director or employee of either of said respondents Reeves Parvin & Co. or Tri-State Brokerage Co., or in his individual capacity, in connection with the purchases of commodities in interstate commerce by the respondent Reeves Parvin & Co., do forthwith cease and desist from accepting or receiving from sellers any fees or commissions as brokerage or allowance in lieu thereof.

It is further ordered, That the parties respondent shall, within 30 days after service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with this order.

IN THE MATTER OF
PASCAL COMPANY, INC.

COMPLAINT, MODIFIED FINDINGS AND ORDER IN REGARD TO THE ALLEGED
VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914

Docket 2945. Complaint, Oct. 15, 1936—Decision, Apr. 18, 1939¹

Where a corporation engaged in manufacture of "Breatheasy," preparation, and atomizer or "nebulizer" for treatment of asthma, hay fever and kindred diseases, and in the sale and distribution thereof through distributors and drug stores in the various States, in substantial competition with those engaged in interstate sale and distribution of other preparations recommended for, and useful in, treatment of such diseases, and of atomizers for use in connection therewith; in extensively advertising its said product through various newspapers of interstate circulation and through radio broadcasts having interstate transmission, and through booklets and circulars issued and distributed by it—

Represented that said preparation was a cure or remedy for asthma, hay fever and kindred diseases, which could be used successfully without following any particular form of diet, and constituted a harmless remedy which would return the user to vigorous, buoyant health, and was the one sure relief available for treatment of asthma, and constituted a "doctor" ever ready to relieve asthmatics, through such statements, among others, as "For Asthma * * *," " * * * only one Remedy for Asthma And that Remedy is Breatheasy," " * * * the one, sure asthmatic relief available today * * * gives a sense of well-being, a return to vigorous, buoyant health * * *," " * * * no diet is necessary. You may eat anything you may desire";

Facts being asthma, as classified by medical profession, may result from many varying causes, no specific cure for asthma is recognized by said profession, and such preparation is not cure therefor nor for hay fever, and, while preparation in question, as well as many other remedies containing adrenalin, may in some cases temporarily relieve asthma, it does not constitute treatment therefor, and use thereof will not bring about or restore vigorous, buoyant health or give absolute and instant relief to sufferers therefrom, proper diet is very important in many cases and may become means of effecting a cure, and said product should not be taken at all in many cases in which diet is essential, and is no less dangerous to user because taken through "nebulizer" than if taken through hypodermic injection;

With capacity and tendency to mislead and deceive public into erroneous belief that said "Breatheasy" was in truth and in fact a remedy and cure for asthma, hay fever and kindred diseases, and that in use thereof it was not necessary to follow any particular diet, and to induce such purchasing public to buy said "Breatheasy" in preference to other preparations designed for treatment of aforesaid diseases and offered for sale by manufacturers, retailers and distributors, and with result of unfairly diverting

¹ For prior findings and order, see 26 F. T. C. 740.