

Complaint

41 F. T. C.

IN THE MATTER OF

JAMES V. BLEVINS, TRADING AS J. V. BLEVENS
COMPANY AND J. V. BLEVINS BROKERAGE COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 2 (c) OF AN ACT OF CONGRESS APPROVED OCT. 15, 1914
AS AMENDED BY ACT OF JUNE 19, 1936*Docket 5333. Complaint, June 12, 1945—Decision, Sept. 17, 1945*

Where an individual engaged in business (1) as a broker of food products, turpentine, mineral oil, cottonseed oil, linseed oil, paint thinners, and other merchandise, in which capacity he acted as sales agent and negotiated sales of merchandise for and on account of seller-principals, and was compensated through commission or brokerage fee paid by them; and (2) as a direct buyer of such merchandise, in which capacity he transmitted his own purchase orders directly to various interstate sellers, purchasing and reselling, as a trader for profit, in his own name and for his own account; in such latter capacity—

Received and accepted directly or indirectly, from the respective sellers from whom he bought such merchandise, commissions, or brokerage fees, customarily paid to him by the various sellers, and also in many instances through permitted deduction by him from the invoice price of the merchandise purchased, of an amount approximately equal to the commission or brokerage fees such sellers paid their brokers:

Held, That such receipt and acceptance by him of brokerage fees or commissions, or allowances and discounts in lieu thereof, constituted a violation of Subsection (c) of Section 2 of the Clayton Act as amended by the Robinson-Patman Act.

Mr. Edward S. Ragsdale for the Commission.

Mr. W. M. Fuqua and *Hilldrop & Mayfield*, of Nashville, Tenn., for respondent.

COMPLAINT

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

PARAGRAPH 1. James V. Blevins is an individual, doing business as J. V. Blevins Company and J. V. Blevins Brokerage Company, with his principal office and place of business located at 155 Second Ave. S, Nashville, Tenn. The respondent since June 19, 1936, has been and is now engaged in business as a broker of food products, turpentine, mineral oil, cottonseed oil, linseed oil, paint thinners, and

various other types of miscellaneous merchandise (all of which are hereinafter designated as merchandise). The respondent since June 19, 1936, has also been and is now engaged in business as a direct buyer of merchandise. The respondent as a direct buyer of merchandise has engaged in the business of buying and selling such merchandise for his own account for resale. The respondent operates a warehouse which is also located in Nashville, Tenn., in which he stores, and from which he thereafter sells, substantial quantities of merchandise; and is engaged in business with Horace Norrell, in Trussville, Ala., under the firm name of Blevins & Norrell Company.

PAR. 2. In the course and conduct of his said business since June 19, 1936, respondent has bought in his own name and for his own account for resale merchandise from various packers, processors, distributors and other sellers who are located in States other than the State in which respondent is located, and as a result of respondent's purchases and his instructions such merchandise has been shipped and transported by the respective sellers thereof across State lines to the respondent.

PAR. 3. The respondent operates his business by the use of two separate and distinct methods, namely, (1) as a "broker" of merchandise and (2) as a "direct buyer" of merchandise.

First: Respondent's business as a broker of merchandise may be described as follows: Respondent in such capacity acts as sales agent and negotiates the sale of merchandise for and on account of seller-principals, and respondent's only compensation for such services is a commission or brokerage fee paid by such seller-principals.

The respondent solicits and obtains orders for merchandise at the respective seller-principals' prices and on such seller-principals' terms of sale. The respondent in this capacity acts as a broker and transmits purchase orders to his several seller-principals, who thereafter invoice and ship such merchandise to the customers.

The respondent as such broker has no financial interest in the merchandise he sells. His only financial interest is the commission or brokerage fee he receives and accepts for making the sales. Such commissions or brokerage fees are customarily based on a percentage of the invoice sales price of the merchandise sold.

The respondent in this capacity is a broker and not a trader for profit. The respondent does not take title to, or have any financial interest in, the merchandise sold and he neither makes a profit nor suffers any loss on the transaction. This phase of respondent's business is not challenged by the complaint.

The phase of the respondent's business that is challenged herein as being unlawful are those acts and practices of the respondent

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when operating as a "direct buyer," which are hereinafter more fully set forth.

Second: Respondent's business as a "direct buyer" of merchandise may be described as follows: The respondent transmits his own purchase orders for merchandise directly to the various interstate sellers from whom he buys. Such sellers invoice and ship such merchandise directly to respondent. The respondent receives and accepts, directly or indirectly, from the respective sellers from whom he buys such merchandise commissions or brokerage fees. Such commissions or brokerage fees are customarily, but not always, paid to the respondent by the various sellers permitting the respondent to deduct from the invoice price of the merchandise purchases an amount which is equal to, or approximately equal to, the commissions or brokerage fees such sellers pay their brokers.

The respondent in connection with such purchases is a direct buyer, and as such is a trader for profit, purchasing and reselling such merchandise in his own name and for his own account, and at his own prices and on his own terms, taking title to such merchandise and assuming all the risk incident to ownership.

If such merchandise shipped to the respondent by the various sellers is lost or damaged in transit, the respondent files claim with the carrier and collects damages from the carrier in his own name and for his own account.

The respondent upon receipt of such merchandise from his various sellers, warehouses such merchandise and insures the merchandise at his own expense and in his own name and for his own account against contingent loss or damage.

The respondent for a period since June 19, 1936, in his annual tax returns sets out the value of the merchandise he has purchased for a stated year and sets out the amount of profit he has received on the sale of such merchandise, or the losses he has sustained on such sales; on the basis of respondent's declaration, respondent's taxes are assessed and paid.

When respondent sells such merchandise, he invoices the merchandise to his customers in his own name and for his own account and at prices and on terms that he determines. The respondent assumes full and complete credit risks on such transactions, reaping a profit or sustaining a loss thereon as the case may be.

PAR. 4. The receipt and acceptance since June 19, 1936, by respondent James V. Blevins, doing business as J. V. Blevins Company and J. V. Blevins Brokerage Company, of commissions, brokerage or other compensation or discounts in lieu thereof, as set forth under method two in paragraph 3 hereof, and such acts and practices as

hereinabove set out, are in violation of Section 2 (c) of the Clayton Act, as amended.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an Act of Congress entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914 (the Clayton Act), as amended by the Robinson-Patman Act, approved June 19, 1936, and by virtue of the authority vested in the Federal Trade Commission by the aforesaid act, the Federal Trade Commission on June 12, 1945, issued and subsequently served its complaint in this proceeding upon the respondent, James V. Blevins, an individual trading as J. V. Blevins Company and J. V. Blevins Brokerage Company, charging him with the violation of subsection (c) of section 2 of said Clayton Act as amended. After the issuance of said complaint, the respondent in due course filed his answer admitting all the material allegations of fact set forth in said complaint and waiving all intervening procedure and further hearing as to said facts. Thereafter, this proceeding regularly came on for final hearing before the Commission on the said complaint and answer, and the Commission having duly considered the same and being now fully advised in the premises, makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent James V. Blevins is an individual, doing business as J. V. Blevins Company and J. V. Blevins Brokerage Company, with his principal office and place of business located at 155 Second Ave. S, Nashville, Tenn. The respondent since June 19, 1936, has been and is now engaged in business as a broker of food products, turpentine, mineral oil, cottonseed oil, linseed oil, paint thinners, and various other types of miscellaneous merchandise (all of which are hereinafter designated as merchandise). The respondent since June 19, 1936, has also been and is now engaged in business as a direct buyer of merchandise. The respondent as a direct buyer of merchandise has engaged in the business of buying and selling such merchandise for his own account for resale. The respondent operates a warehouse which is also located in Nashville, Tenn., in which he stores, and from which he thereafter sells, substantial quantities of merchandise; and is engaged in business with Horace Norrell, in Trussville, Ala., under the firm name of Blevins & Norrell Company.

Findings

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PAR. 2. The respondent in the course and conduct of his said business since June 19, 1936, has bought in his own name and for his own account for resale merchandise from various packers, processors, distributors and other sellers who are located in States other than the State in which respondent is located, and as a result of respondent's purchases and his instructions such merchandise has been shipped and transported by the respective sellers thereof across State lines to the respondent.

PAR. 3. The respondent operates his business by the use of two separate and distinct methods, namely, (1) as a "broker" of merchandise and (2) as a "direct buyer" of merchandise.

First: Respondent's business as a broker of merchandise may be described as follows: Respondent in such capacity acts as sales agent and negotiates the sale of merchandise for and on account of seller-principals, and respondent's only compensation for such services is a commission or brokerage fee paid by such seller-principals.

The respondent solicits and obtains orders for merchandise at the respective seller-principals' prices and on such seller-principals' terms of sale. The respondent in this capacity acts as a broker and transmits purchase orders to his several seller-principals, who thereafter invoice and ship such merchandise to the customers.

The respondent as such broker has no financial interest in the merchandise he sells. His only financial interest is the commission or brokerage fee he receives and accepts for making the sales. Such commissions or brokerage fees are customarily based on a percentage of the invoice sales price of the merchandise sold.

The respondent in this capacity is a broker and not a trader for profit. The respondent does not take title to, or have any financial interest in, the merchandise sold, and he neither makes a profit nor suffers any loss on the transaction. This phase of respondent's business is not challenged by the complaint.

The phase of the respondent's business that is challenged herein as being unlawful consists of those acts and practices of the respondent when operating as a "direct buyer," which are hereinafter more fully set forth.

Second: Respondent's business as a "direct buyer" of merchandise may be described as follows: The respondent transmits his own purchase orders for merchandise directly to the various interstate sellers from whom he buys. Such sellers invoice and ship such merchandise directly to respondent. The respondent receives and accepts, directly or indirectly, from the respective sellers from whom he buys such merchandise, commissions or brokerage fees. Such commissions or brokerage fees are customarily, but not always, paid to the respond-

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ent by the various sellers, and in many instances such sellers permit the respondent to deduct from the invoice price of the merchandise purchases an amount which is equal to, or approximately equal to, the commissions or brokerage fees such sellers pay their brokers.

The respondent in connection with such purchases is a direct buyer, and, as such, is a trader for profit, purchasing and reselling such merchandise in his own name and for his own account, and at his own prices and on his own terms, taking title to such merchandise and assuming all the risk incident to ownership.

If such merchandise shipped to the respondent by the various sellers is lost or damaged in transit, the respondent files claim with the carrier and collects damages from the carrier in his own name and for his own account.

The respondent, upon receipt of such merchandise from his various sellers, warehouses such merchandise and insures the merchandise at his own expense and in his own name and for his own account against contingent loss or damage.

The respondent, for a period since June 19, 1936, in his annual tax returns sets out the value of the merchandise he has purchased for a stated year and sets out the amount of profit he has received on the sale of such merchandise or the losses he has sustained on such sales; on the basis of respondent's declaration respondent's taxes are assessed and paid.

When respondent sells such merchandise, he invoices the merchandise to his customers in his own name and for his own account and at prices and on terms that he determines. The respondent assumes full and complete credit risks on such transactions, reaping a profit or sustaining a loss thereon, as the case may be.

CONCLUSION

The receipt and acceptance by the respondent of brokerage fees or commissions, or allowances and discounts in lieu thereof, as hereinabove set forth, is in violation of subsection (c) of section 2 of an act of Congress entitled, "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914 (the Clayton Act), as amended by an Act of Congress approved June 19, 1936 (the Robinson-Patman Act).

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the answer of the respondent, which answer admits all material allegations of the com-

plaint to be true and waives all other intervening procedure and further hearings as to said facts; and the Commission having made its findings as to the facts and conclusion that said respondent has violated the provisions of subsection (c) of Section 2 of an Act of Congress entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914 (the Clayton Act), as amended by an Act of Congress approved June 19, 1936 (the Robinson-Patman Act):

It is ordered, That the respondent, James V. Blevins, an individual trading as J. V. Blevins Company and J. V. Blevins Brokerage Company, his representatives, agents, and employees, directly or through any corporate or other device in connection with the purchase of food products or other merchandise in commerce as "commerce" is defined in the aforesaid Clayton Act as amended, do forthwith cease and desist from:

Receiving or accepting, directly or indirectly, anything of value as brokerage, commission, or other compensation, or any allowance or discount in lieu thereof, from any seller, in or in connection with purchases made from such seller when such purchases are made for respondent's own account.

It is further ordered, That the respondent shall, within 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

Syllabus

IN THE MATTER OF

FRACKMAN DIAMOND CORPORATION, AND MORTON
FRACKMAN, JOSEPH FRACKMAN, GILBERT E.
HORTON, TRADING AND DOING BUSINESS
UNDER THE NAME HORTON FIFTH
AVENUE JEWELERS

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

Docket 4518. Complaint, June 10, 1941—Decision, Sept. 18, 1945

Where a corporation and an individual, in cooperation with whom it operated a retail jewelry store, and two brothers, who controlled aforesaid corporation and were partners also in said retail business, engaged in the interstate sale and distribution of jewelry—

- (a) Represented in catalogs distributed throughout the United States that the prices at which their merchandise was offered for sale were wholesale prices, through such statements as "included herein is one of the most complete lines of fine diamond and precious stone jewelry available at authentic manufacturers' wholesale prices", "NOW FOR THE FIRST TIME in its history, this firm selling through HORTON directly to the public at manufacturers' wholesale prices is able to eliminate all middlemen's profits and overhead expenses, thereby offering you tremendous savings on your diamond purchases";

The facts being that their prices were actually retail prices, and greatly in excess of customary wholesale prices;

- (b) Represented, as aforesaid, that the customary retail prices of their merchandise were greatly in excess of the actual selling prices quoted in such catalogs, and that such quoted prices were special or reduced, through such typical statements as "RSG-630—HOOP RING, yellow gold; 2 large round white diamonds set in white gold; approx. wt. .50 ct. Customary retail price: \$135. Our net cost to you: \$65";

The facts being the prices represented as "customary retail prices" were fictitious, being greatly in excess of their regular retail prices, and the prices designated as "Our net cost to you" were in no sense special or reduced but were their regular and customary retail prices;

- (c) Represented that certain of the mountings used for their rings were made entirely by hand, through the use in their catalogs of the legend "Hand Made Mountings" and through the use of the legend "Hand Made" on the mountings themselves;

The facts being said mountings were not, as long understood from the term "Hand Made", the substantially more costly mountings made entirely by hand by skilled craftsmen, but were in many cases made by machine or cast in a mould, with only a small amount of finishing done by hand;

- (d) Represented the carat weight of the diamonds in their rings in such manner as to mislead the public, through such typical statements in their catalogs as "RSG-637—SOLITAIRE ENGAGEMENT RING, yellow gold; large round white center diamond, flanked on either side with 2 small diamonds set heart shaped, in white gold; approx. wt. .40 ct. * * *";

The facts being that, contrary to the longtime custom in the jewelry industry