

Complaint

38 F. T. C.

IN THE MATTER OF

STACY WILLIAMS COMPANY, INC. ET AL.

COMPLAINT, 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 5087. Complaint, Nov. 26, 1943—Decision, June 13, 1944

Where the president of a corporation which was engaged in the manufacture of various types, grades and brands of table syrups and in the purchase, sale and distribution of food products, steel and glass containers, and other commodities, purchasing a large portion of its requirements or such containers, etc., through a second concern; together with the individual who was president, secretary and treasurer of said second concern, as well as secretary and treasurer of said first corporation; and said two corporations, the entire stock of both of which was owned by the two men and their wives—

Received, in connection with their purchases of steel and glass containers and other commodities from numerous sellers in other states, in their own behalf and for their own account for resale, directly or indirectly, brokerage fees or commissions in substantial amounts from such sellers:

Held, That such receipt and acceptance of sums of money—generally referred to as brokerage fees or commissions—from interstate sellers, by aforesaid individuals, and by said concern and corporation, in connection with their respective purchases, was in violation of subsec. (c) of sec. 2 of the Clayton Act as amended.

Mr. Edward S. Ragsdale for the Commission.

Beddow, Ray & Jones, of Birmingham, Ala., for respondents.

COMPLAINT

The Federal Trade Commission, having reason to believe that the parties respondent named in the caption hereof and hereinafter more particularly designated and described, since June 19, 1936, have violated, and are 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. Respondent, Stacy Williams, is an individual, residing in the city of Birmingham, Ala., and is president of Stacy Williams Company, Inc., and is also a stockholder in Bennett Brokerage Company, Inc.

Respondent, Claude Bennett, is an individual, residing in the city of Birmingham, Ala., and is president, secretary and treasurer of Bennett Brokerage Company, Inc., and is secretary and treasurer of the Stacy Williams Company, Inc.

Respondent, Bennett Brokerage Company, Inc., is a corporation, organized and existing under the laws of the State of Alabama, with its principal office and place of business located at 221 Fourth Avenue, North, Birmingham, Ala. This organization is a closed corporation, the entire stock of which is owned by respondent, Stacy Williams, and respondent, Claude Bennett, and/or their respective wives. Said respondent company since June 19, 1936, has engaged in negotiating the sale of steel and glass con-

tainers, including tin cans, glass bottles and various other products and commodities. Said respondent's principal customer for such merchandise is the respondent, Stacy Williams Company, Inc., as the respondent, Bennett Brokerage Company, Inc., receives approximately seventy-five percent of its income from brokerage fees or commissions on sales of merchandise to respondent, Stacy Williams Company, Inc.

Respondent, Stacy Williams Company, Inc., is a corporation, organized and existing under the laws of the State of Alabama, with its principal office and place of business located at 221 Fourth Avenue, North, Birmingham, Ala. This organization is a closed corporation, the entire stock of which is owned by Stacy Williams and Claude Bennett and/or their respective wives. Said respondent company is engaged in the business of manufacturing various types, grades and brands of table syrups and also in the purchase, sale and distribution of steel and glass containers, including tin cans, glass bottles and various other products and commodities. Said respondent company has a branch located at Tuscaloosa, Ala., which is principally engaged in the purchase, sale and distribution of food products and other commodities. The respondent, Stacy Williams Company, Inc., purchases a large portion of its requirements of steel and glass containers, including tin cans, glass bottles and various other products and commodities, through the Bennett Brokerage Company, Inc.

PAR. 2. The active management and operation of said respondent corporations are directed from the same private office by respondents, Stacy Williams and Claude Bennett. The same office force is available and is utilized in the operations of both of said respondent corporations. The respective wives exercise no control or direction of the operations of either respondent corporation. The offices of both individual respondents named and of both respondent corporations are located in a building owned by the individual respondents at 221 Fourth Avenue, North, Birmingham, Ala. Respondent, Stacy Williams Company, Inc., has a capital stock of ten thousand dollars, which is divided into one hundred shares of stock with a par value of one hundred dollars each. The stock of this corporation is owned by the following individuals in the amount stated:

Stacy Williams	49 shares
Bessie Williams	1 share
Claude Bennett	49 shares
Lucille Bennett	1 share

Respondent, Bennett Brokerage Company, Inc., has capital stock in the amount of two thousand dollars, which is divided into twenty shares of stock with a par value of one hundred dollars each. The stock is owned by the following individuals in the amount stated:

Claude Bennett	1 share
Lucille Bennett	9 shares
Bessie Williams	10 shares

Thus there is a complete interlocking stock ownership of these two companies, and the income received by both corporations is for the benefit of the respective stockholders. Stacy Williams and Bessie Williams, his wife, own a fifty percent stock interest, and Claude Bennett and Lucille

Bennett, his wife, own the other fifty percent stock interest in respondent, Stacy Williams Company, Inc., and in respondent, Bennett Brokerage Company, Inc.

PAR. 3. Respondents, Stacy Williams, individually and as president of Stacy Williams Company, Inc.; Claude Bennett, individually and as president, secretary and treasurer of Bennett Brokerage Company, Inc.; and as secretary and treasurer of Stacy Williams Company, Inc., Bennett Brokerage Company, Inc., and Stacy Williams Company, Inc.; in the course and conduct of their respective businesses since June 19, 1936, purchased a substantial portion of their requirements of steel and glass containers, including tin cans, glass bottles and various other products and commodities, through the instrumentality of Bennett Brokerage Company, Inc. Such purchases are made from various sellers located in States other than the State in which the respective respondents are located. Pursuant to said purchases and respondents' instructions, said merchandise is shipped and transported by the respective interstate sellers thereof across State lines to the respondents Bennett Brokerage Company, Inc., and Stacy Williams Company, Inc.

PAR. 4. Respondents, Stacy Williams; individually and as president of Stacy Williams Company, Inc.; Claude Bennett, individually and as president, secretary and treasurer of Bennett Brokerage Company, Inc., and secretary and treasurer of Stacy Williams Company, Inc.; Bennett Brokerage Company, Inc., and Stacy Williams Company, Inc., since June 19, 1936, in connection with their purchases of a substantial portion of their requirements of steel and glass containers, including tin cans, glass bottles and various other products and commodities in interstate commerce, in their own behalf and for their own account for resale, have been and are now receiving and accepting, directly or indirectly, brokerage fees or commissions in substantial amounts from numerous interstate sellers of said merchandise.

PAR. 5. A representative, but by no means complete, list of sellers who, since June 19, 1936, have sold and delivered steel and glass containers, including tin cans, glass bottles and various other products and commodities to respondents, Stacy Williams, Claude Bennett, Stacy Williams Company, Inc., and Bennett Brokerage Company, Inc., and who have allowed, granted and paid, directly or indirectly, to each of said respondents brokerage fees or commissions on such purchases and sales, is as follows:

National Can Corporation, New York, N. Y.

Clinton Company, Clinton, Iowa.

Ruggles & Rademaker Salt Company, Manistee, Mich.

Continental Can Company, Memphis, Tenn.

Knox Glass Bottle Company, Jackson, Miss.

PAR. 6. The receipt and acceptance of sums of money generally referred to as brokerage fees or commissions from interstate sellers since June 19, 1936, by Stacy Williams, individually and as president of the Stacy Williams Company, Inc.; by Claude Bennett, individually and as president, secretary and treasurer of the Bennett Brokerage Company, Inc., and secretary and treasurer of the Stacy Williams Company, Inc.; by Bennett Brokerage Company, Inc., and by Stacy Williams Company, Inc., in connection with their respective purchases and sales of steel and glass con-

tainers, including tin cans, glass bottles and various other products and commodities by said respondents, is in violation of subsection (c) of Section 2 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 (U. S. C. Title 15, Sec. 13), the Federal Trade Commission on November 26, 1943, issued and thereafter served its complaint in this proceeding upon the parties respondent named in the caption hereof, charging said respondents with violating the provisions of subsection (c) of section 2 of said act, as amended.

After the issuance of said complaint on November 26 1943, and the filing of the respondents' answer on December 20, 1943, the Commission, by order entered herein, granted respondents' motion for petition to file a supplemental answer, which supplemental answer was duly filed on January 11, 1944, and in said answer and supplemental answer each of the respondents admitted all material allegations of fact set forth in said complaint and waived all intervening procedure, further hearings as to said facts, and expressly waived the filing of briefs and oral argument. The respondents in their answer, however, further alleged that since the complaint was issued they have taken the necessary steps to discontinue the practices complained of. Thereafter this proceeding came on for final hearing before the Commission on said complaint, answer and supplemental 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. Respondent, Stacy Williams, is an individual, residing in the city of Birmingham, Ala., and is president of Stacy Williams Company, Inc., and is also a stockholder in Bennett Brokerage Company, Inc.

Respondent, Claude Bennett, is an individual, residing in the city of Birmingham, Ala., and is president, secretary and treasurer of Bennett Brokerage Company, Inc., and is secretary and treasurer of the Stacy Williams Company, Inc.

Respondent, Bennett Brokerage Company, Inc., is a corporation, organized and existing under the laws of the State of Alabama, with its principal office and place of business located at 221 Fourth Avenue, North, Birmingham, Ala. This organization is a closed corporation, the entire stock of which is owned by respondent, Stacy Williams, and respondent, Claude Bennett, and/or their respective wives. Said respondent company since June 19, 1936, has engaged in negotiating the sale of steel and glass containers, including tin cans, glass bottles and various other products and commodities. Said respondent's principal customer for such merchandise is the respondent, Stacy Williams Company, Inc., as the respondent, Bennett Brokerage Company, Inc., receives approximately seventy-five percent of its income from brokerage fees or commissions on sales of merchandise to respondent, Stacy Williams Company, Inc.

Respondent, Stacy Williams Company, Inc., is a corporation, organized and existing under the laws of the State of Alabama, with its principal office and place of business located at 221 Fourth Avenue, North, Birmingham, Ala. This organization is a closed corporation, the entire stock of which is owned by Stacy Williams and Claude Bennett and/or their respective wives. Said respondent company is engaged in the business of manufacturing various types, grades and brands of table syrups and also in the purchase, sale and distribution of steel and glass containers, including tin cans, glass bottles and various other products and commodities. Said respondent company has a branch located at Tuscaloosa, Alabama, which is principally engaged in the purchase, sale and distribution of food products and other commodities. The respondent, Stacy Williams Company, Inc., purchases a large portion of its requirements of steel and glass containers, including tin cans, glass bottles and various other products and commodities, through the Bennett Brokerage Company, Inc.

PAR. 2. The active management and operation of said respondent corporations are directed from the same private office by respondents, Stacy Williams and Claude Bennett. The same office force is available and is utilized in the operations of both of said respondent corporations. The respective wives exercise no control or direction of the operations of either respondent corporations. The offices of both individual respondents named and of both respondent corporations are located in a building owned by the individual respondents at 221 Fourth Avenue, North, Birmingham, Ala. Respondent, Stacy Williams Company, Inc., has a capital stock of ten thousand dollars, which is divided into one hundred shares of stock with a par value of one hundred dollars each. The stock of this corporation is owned by the following individuals in the amount stated:

Stacy Williams	49 shares
Bessie Williams	1 share
Claude Bennett	49 shares
Lucille Bennett	1 share

Respondent, Bennett Brokerage Company, Inc., has capital stock in the amount of two thousand dollars, which is divided into twenty shares of stock with a par value of one hundred dollars each. The stock is owned by the following individuals in the amount stated:

Claude Bennett	1 share
Lucille Bennett	9 shares
Bessie Williams	10 shares

Thus, there is a complete interlocking stock ownership of these two companies, and the income received by both corporations is for the benefit of the respective stockholders. Stacy Williams and Bessie Williams, his wife, own a fifty percent stock interest, and Claude Bennett and Lucille Bennett, his wife, own the other fifty percent stock interest in respondent, Stacy Williams Company, Inc., and in respondent, Bennett Brokerage Company, Inc.

PAR. 3. Respondents, Stacy Williams, individually and as president of Stacy Williams Company, Inc.; Claude Bennett, individually and as president, secretary and treasurer of Bennett Brokerage Company, Inc., and as secretary and treasurer of Stacy Williams Company, Inc.; Bennett

Brokerage Company, Inc., and Stacy Williams Company, Inc., in the course and conduct of their respective businesses since June 19, 1936, purchased a substantial portion of their requirements of steel and glass containers, including tin cans, glass bottles and various other products and commodities, through the instrumentality of Bennett Brokerage Company, Inc. Such purchases are made from various sellers located in States other than the State in which the respective respondents are located. Pursuant to said purchases and respondents' instructions, said merchandise is shipped and transported by the respective interstate sellers thereof across State lines to the respondents, Bennett Brokerage Company, Inc., and Stacy Williams Company, Inc.

PAR. 4. Respondents, Stacy Williams, individually and as president of Stacy Williams Company, Inc.; Claude Bennett, individually and as president, secretary and treasurer of Bennett Brokerage Company, Inc., and secretary and treasurer of Stacy Williams Company, Inc.; Bennett Brokerage Company, Inc., and Stacy Williams Company, Inc., since June 19, 1936, in connection with their purchases of a substantial portion of their requirements of steel and glass containers, including tin cans, glass bottles and various other products and commodities in interstate commerce, in their own behalf and for their own account for resale, have been and are now receiving and accepting, directly or indirectly, brokerage fees or commissions in substantial amounts from numerous interstate sellers of said merchandise.

PAR. 5. A representative, but by no means complete list of sellers who, since June 19, 1936, have sold and delivered steel and glass containers, including tin cans, glass bottles and various other products and commodities to respondents, Stacy Williams, Claude Bennett, Stacy Williams Company, Inc., and Bennett Brokerage Company, Inc., and who have allowed, granted and paid, directly or indirectly, to each of said respondents brokerage fees or commissions on such purchases and sales, is as follows:

National Can Corporation, New York, N. Y.
Clinton Company, Clinton, Iowa.
Ruggles & Rademaker Salt Company, Manistee, Mich.
Continental Can Company, Memphis, Tenn.
Knox Glass Bottle Company, Jackson, Miss.

CONCLUSION

The receipt and acceptance of sums of money generally referred to as brokerage fees or commissions from interstate sellers since June 19, 1936, by Stacy Williams, individually and as president of the Stacy Williams Company, Inc.; by Claude Bennett, individually and as president, secretary and treasurer of the Bennett Brokerage Company, Inc., and secretary and treasurer of the Stacy Williams Company, Inc.; by Bennett Brokerage Company, Inc., and by Stacy Williams Company, Inc., in connection with their respective purchases and sales of steel and glass containers, including tin cans, glass bottles and various other products and commodities by said respondents, is found by the Commission to be in violation of subsection (c) of Section 2 of the Clayton Act, as amended.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the answer and supplemental

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answer of the respondents, which supplemental answer admits all the material allegations of the complaint to be true and waives all other intervening procedure and further hearing as to said facts; and the Commission having made its findings as to the facts and its conclusion that the respondents have violated the provisions of subsection (c) of Section 2 of "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914 (Clayton Act), as amended by act of June 19, 1936 (Robinson-Patman Act).

It is ordered, That the respondents, Stacy Williams, individually and as president of Stacy Williams Company, Inc.; Claude Bennett, individually and as president, secretary, and treasurer of Bennett Brokerage Company, Inc., and secretary and treasurer of Stacy Williams Company, Inc., and their respective representatives, agents, and employees; and respondents, Bennett Brokerage Company, Inc., a corporation; and Stacy Williams Company, Inc., a corporation, and their respective officers, representatives, agents, and employees, directly or through any corporate or other device in connection with the purchase by the respondents, or any of them of their requirements of steel or glass containers, including tin cans, glass bottles, and various other products and commodities, in commerce as "commerce" is defined in the aforesaid Clayton Act, do forthwith cease and desist from:

Receiving or accepting, directly or indirectly, from any seller anything of value as a commission, brokerage, or other compensation, or any allowance or discount in lieu thereof, upon purchases of steel or glass containers, tin cans, glass bottles, and various other products and commodities made by the respondents or for their account.

It is further ordered, That the respondents shall, within 60 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 are complying and have complied with this order.

Complaint

IN THE MATTER OF

ATLANTIC CITY WHOLESALE DRUG COMPANY ET AL.

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

Docket 4957. Complaint, May 3, 1943—Decision, June 14, 1944

- Where a corporation and two individuals, its president and sales and advertising manager, respectively, engaged in the wholesale drug business in competition with others similarly engaged, and in publishing a magazine, not as an independent business operated in good faith on a profit basis, but as a subterfuge knowingly designed and operated to induce prices which discriminated in its favor in the purchase of drugs, cosmetics and other merchandise—
- Induced manufacturers and sellers to enter into contracts with them for advertisements in said magazine, value of which was insubstantial, on the agreement or understanding that the charges made for such advertising—which was uniform neither as to amount required nor price charged therefor—would be credited upon their purchases from such manufacturers and sellers, and refused to make purchases from manufacturers or sellers unless they purchased such advertising;
- With result that they thereby obtained discriminations in price amounting to differentials in their favor of from 20 percent to about 40 percent less than their competitors paid such sellers for merchandise of like grade and quality, and were thus enabled to and did resell such products at prices substantially less than those charged by the manufacturers and distributors of such products to the same classes of customers;
- Effect of which discriminations in price induced and received by them was substantially to lessen competition and to tend to create a monopoly in the sale and distribution of drug products and to injure, destroy, and prevent competition between said corporation and its customers on the one hand and their competitors on the other hand and between and among customers of each:
- Held, That such acts and practices, under the circumstances set forth, were in violation of Sec. 2 (f) of an Act of Congress approved October 15, 1914, as amended by an Act of Congress approved June 19, 1936.
- Before *Mr. John L. Hornor*, trial examiner.
Mr. Edward S. Ragsdale for the Commission.
Frank & Frank, of New York City, for Atlantic City Wholesale Drug Co. and Roy H. Cochran.

COMPLAINT

The Federal Trade Commission having reason to believe that the parties respondent named in the caption hereof and hereinafter more particularly designated and described, since June 19, 1936, have violated and are now violating the provisions of 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 its complaint, stating its charges with respect thereto as follows:

PARAGRAPH 1. The respondent, Atlantic City Wholesale Drug Company, is a corporation, organized and existing under the laws of the State