

Complaint

IN THE MATTER OF

JESSE C. STEWART COMPANY AND JESSE C. STEWART

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SUBSECTION (c) OF SECTION 2 OF AN ACT OF CONGRESS APPROVED OCTOBER 15, 1914, AS AMENDED BY AN ACT OF CONGRESS APPROVED JUNE 19, 1936

Docket 5494. Complaint, May 19, 1947—Decision, Nov. 28, 1947

Where a corporation engaged as an agent or broker in the sale and distribution of flour and other commodities, principally to commercial users, together with its president who owned about 75 percent of its stock ;

In connection with the making of purchases of such commodities for a certain macaroni and spaghetti corporation—of which, together, they owned three-quarters of the stock—under a course of action by which said macaroni concern transmitted its orders to said broker corporation, which then solicited offers from flour milling companies and other sellers in various States ; and placed the orders with the seller making the most favorable offer, who invoiced and shipped the commodities directly to said concern—

Received and accepted from such sellers, commissions, brokerage, or allowances or discounts in lieu thereof, in substantial amounts, and thereby, in view of their financial interest in said concern, received and accepted such commissions, etc., on purchases made for their own ultimate use and benefit:

Held, That such receipt and acceptance, under the circumstances set forth, by said corporation and said individual, of commissions, brokerage, allowances, or discounts in lieu thereof, on sales made to said purchaser concern, were in violation of subsection 2 (c) of the Clayton Act as amended by the Robinson-Patman Act.

Mr. Edward S. Ragsdale for the Commission.

Mr. Lawrence P. Monahan, of Pittsburgh, Pa., 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 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 Jesse C. Stewart Co. is a corporation organized, existing, and doing business under the laws of the State of Pennsylvania, with its office and principal place of business located at 1217 West Carson Street, Pittsburgh, Pa., and is engaged in business as agent or broker, selling and distributing various types

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and grades of flour and other commodities. The respondent's sales of flour and other commodities are largely confined to commercial users, substantial quantities being sold to the La Premiata Macaroni Corp. of Connellsville, Pa., for use in the production of macaroni and spaghetti.

The respondent Jesse C. Stewart Co. owns a majority stock interest in the La Premiata Macaroni Corp., and while this complaint does not challenge the respondent's general activities as a broker, it does challenge respondent's activities as a broker where respondent makes substantial sales of flour, or other commodities, to the La Premiata Macaroni Corp. for its own account, and receives commissions or brokerage fees on such sales.

PAR. 2. Respondent Jesse C. Stewart is an individual with his office and principal place of business located at 1217 West Carson Street, Pittsburgh, Pa., and is the principal stockholder in Jesse C. Stewart Co., a corporation, owning approximately 75 percent of the capital stock of said corporation, and for a substantial period of time since June 19, 1936, was president of said respondent corporation.

The respondent is also a substantial stockholder in the La Premiata Macaroni Corp., a corporation located at Connellsville, Pa., and for a substantial period of time since June 19, 1936, was president of said corporation. The respondent Jesse C. Stewart, individually and as president of Jesse C. Stewart Co., together with respondent Jesse C. Stewart Co., a corporation, now owns, and has owned since June 19, 1936, approximately 75 percent of the capital stock of the La Premiata Macaroni Corp.

The respondent Jesse C. Stewart, since June 19, 1936, has exercised, and still exercises, control over the business conducted by Jesse C. Stewart Co., a corporation, and the La Premiata Macaroni Corp., formulating, directing, and controlling the buying, selling, and distribution policies of both corporations.

PAR. 3. Respondent Jesse C. Stewart Co., as aforesaid, is now and has been since June 19, 1936, engaged in the business as agent or broker, selling and distributing various types and grades of flour and other commodities, and said individual respondent Jesse C. Stewart, through said corporate respondent, has likewise been engaged in said business. Said respondent in the course and conduct of its business as aforesaid, has sold substantial quantities of flour and other commodities to the La Premiata Macaroni Corp. of Connellsville, Pa. The manner of operation of respondent's business is that of receiving requests, orders, or requisitions for flour or other commodities from the La Premiata Macaroni Corp., and when such orders are

received the respondent contacts various millers or other sellers and thereafter places orders with the source of supply offering the specified commodities at prices and on terms and conditions most favorable from the standpoint of the purchaser, to cover the requirements of La Premiata Macaroni Corp. Such orders are generally, but not always, placed with the millers or other sellers who will pay the respondent a commission or brokerage fee on the transaction. The respondent usually transmits such orders to two millers, namely, the Minneapolis Milling Co. of Minneapolis, Minn., and the Amber Milling Division of the Farmers Union Grain Terminal Association of St. Paul, Minn., who, when such orders have been received and accepted, invoice and ship the merchandise directly to the La Premiata Macaroni Corp.; and after the merchandise has been received and paid for by said buyer, the respective sellers grant and allow the respondent commissions or brokerage fees on the sale.

PAR. 4. Respondent Jesse C. Stewart Co., in the course and conduct of its said business since June 19, 1936, has sold a substantial quantity of flour and other commodities to the La Premiata Macaroni Corp. of Connellsville, Pa., as agent or broker for the Minneapolis Milling Co. of Minneapolis, Minn., and the Amber Milling Division of the Farmers Union Grain Terminal Association of St. Paul, Minn., and for various other sellers located in a State other than the State in which the La Premiata Macaroni Corp. is located, and as a result of respondent Jesse C. Stewart Co.'s requests, orders, requisitions, and instructions, such food products have been shipped and transported across State lines by such sellers to said buyer.

The respondent Jesse C. Stewart Co.'s sales for said sellers since June 19, 1936, are representative of respondent's sales of various types, grades, and brands of flour and other commodities sold for numerous other interstate sellers. Since June 19, 1936, there has been a constant current of trade and commerce conducted by said respondent in such merchandise between and among the various States of the United States.

PAR. 5. Respondents Jesse C. Stewart Co., a corporation, and Jesse C. Stewart individually and as president of Jesse C. Stewart Co., and also as president and a majority stockholder of the La Premiata Macaroni Corp., in the course and conduct of interstate commerce, in connection with their sales of substantial quantities of flour and other commodities in commerce to the said La Premiata Macaroni Corp. have, since June 19, 1936, received and are now receiving and accepting, directly or indirectly, commissions or brokerage fees in substantial amounts from several interstate sellers of said merchandise.

PAR. 6. The foregoing acts and practices of respondents Jesse C. Stewart Co., a corporation, and Jesse C. Stewart, individually and as president of Jesse C. Stewart Co., a corporation, in commerce, constitute a violation of subsection (c) of section 2 of the said act of Congress approved October 15, 1914, as amended by said act of Congress approved June 19, 1936.

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 May 19, 1947, issued and subsequently served its complaint in this proceeding upon the respondents, Jesse C. Stewart Co., a corporation, and Jesse C. Stewart, individually and as president of Jesse C. Stewart Co., charging said respondents with violation of the provisions of subsection (c) of section 2 of said Clayton Act, as amended. After the issuance of the complaint, the respondents in due course filed their answer, in which answer they admitted all the material allegations of fact set forth in said complaint and waived all intervening procedure and further hearing as to the facts. Thereafter, this proceeding regularly came on for final hearing before the Commission upon the complaint and the answer thereto, 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, Jesse C. Stewart Co., is a corporation organized and existing under and by virtue of the laws of the State of Pennsylvania, with its office and principal place of business located at 1217 West Carson Street, Pittsburgh, Pa. This respondent is engaged in business as an agent or broker in the sale and distribution of flour and other commodities. Its sales are made principally to commercial users of these commodities, and in the course and conduct of its business it sells substantial quantities of flour and other commodities to the La Premiata Macaroni Corp., a corporation, of Connelleville, Pa., for use in the production of macaroni and spaghetti.

PAR. 2. The respondent, Jesse C. Stewart, is an individual and is president and owner of approximately 75 percent of the capital stock of respondent Jesse C. Stewart Co. This respondent also maintains

his office at 1217 West Carson Street, Pittsburgh, Pa., and, acting by and through the Jesse C. Stewart Co., he, too, is engaged in business as an agent or broker. Respondents Jesse C. Stewart Co. and Jesse C. Stewart together own approximately 75 percent of the capital stock of the La Premiata Macaroni Corp., and for a substantial period of time subsequent to June 19, 1936, respondent Jesse C. Stewart also was president of said La Premiata Macaroni Corp. At all times mentioned herein respondent Jesse C. Stewart has exercised full control over the business affairs and has formulated, directed and controlled the buying, selling, and distribution policies of both the Jesse C. Stewart Co. and the La Premiata Macaroni Corp.

PAR. 3. Since June 19, 1936, the manner in which the respondents have operated in their transactions with the La Premiata Macaroni Corp. has been as follows: The La Premiata Macaroni Corp. first transmits to the Jesse C. Stewart Co. its orders, requests, or requisitions for such flour and other commodities as it will require. The Jesse C. Stewart, Co. then contacts flour-milling companies and other sellers of such commodities located in various States of the United States, soliciting from them their respective offers concerning the price at which and the terms and conditions of sale under which they will supply the specified commodities, and thereafter places the orders received from the La Premiata Macaroni Corp. with the sellers offering the commodities at the lowest price and under terms and conditions that are most favorable to the purchaser. Such sellers, upon receiving and accepting the orders, then invoice and ship the commodities ordered directly to the La Premiata Macaroni Corp. at its place of business in Connellsville, Pa.

Among the sellers of flour and other commodities with which the Jesse C. Stewart Co. so places orders of the La Premiata Macaroni Corp., and which sellers invoice and ship the commodities ordered directly to the La Premiata Macaroni Corp. as aforesaid, are the Minneapolis Milling Co. of Minneapolis, Minn., and the Amber Milling Division of the Farmers Union Grain Terminal Association, of St. Paul, Minn. Thus the respondents Jesse C. Stewart Co. and Jesse C. Stewart, individually and by virtue of his official position in the Jesse C. Stewart Co., maintain, and at all times mentioned herein have maintained, a course of trade in the commodities they handle in commerce among and between the various States of the United States.

PAR. 4. In connection with the sale in commerce as herein described of flour and other commodities to the La Premiata Macaroni Corp., the respondents Jesse C. Stewart Co., and Jesse C. Stewart, in-

dividually and as president of the Jesse C. Stewart, Co., have received and accepted, and are now receiving and accepting, from the sellers of such merchandise, commissions, brokerage, or allowances or discounts in lieu thereof, in substantial amounts. In view of the relationship of said respondents with the La Premiata Macaroni Corp., the purchaser, including the complete control over its affairs exercised by the respondent Jesse C. Stewart, the respondents naturally represent and act for and in behalf of said purchaser in all of these transactions, and any services or benefits which may accrue to the sellers therefrom are services and benefits solely incidental to the services rendered to the purchaser. In view of the financial interest of the respondents in said La Premiata Macaroni Corp., the purchaser, including the ownership by said respondents of a majority stock interest therein, the commissions, brokerage, or allowances or discounts in lieu thereof, paid by the sellers to the respondents are necessarily received and accepted by said respondents on purchases made for their own ultimate use and benefit. To the extent of 75 percent of the capital stock interest in the La Premiata Macaroni Corp., at least, the results of the transactions are precisely the same as if the commissions, brokerage, or allowances in lieu of brokerage were paid by the sellers directly to the purchaser.

CONCLUSION

In the circumstances hereinabove set forth the receipt and acceptance by the respondents Jesse C. Stewart Co., and Jesse C. Stewart, individually and as president of the Jesse C. Stewart Co., of commissions, brokerage or allowances or discounts in lieu thereof on sales made to the La Premiata Macaroni Corp., is in violation of subsection (c) of section 2 of the Clayton Act, as amended.

Commissioner Mason not participating.

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 respondents, in which answer said respondents admit all the material allegations of fact set forth in the complaint and waive all intervening procedure and further hearing as to said facts, and the Commission, having made its findings as to the facts and its conclusion that said respondents have violated the provisions of subsection (c) of section 2 of the act of Congress entitled "An act to supplement existing laws against unlawful restraints and monop-

olies, 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) :

It is ordered, That the respondent, Jesse C. Stewart Co., a corporation, and its officers, agents, representatives, and employees, and the respondent, Jesse C. Stewart, individually and as president of the Jesse C. Stewart Co., and his agents, representatives, and employees, in connection with sales of flour and other commodities to the La Premiata Macaroni Corp., in commerce, as "commerce" is defined in the Clayton Act, as amended, do forthwith cease and desist from receiving or accepting from any seller, directly or indirectly, anything of value as brokerage, or any commission, compensation, allowance or discount in lieu thereof.

It is further ordered, That said 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 have complied with this order.

Commissioner Mason not participating.

IN THE MATTER OF

R. H. TILLSON, TRADING AS ISABELLE BEAUTETICS
COMPANY AND R. H. TILLSON CO.

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SECTION 5 OF AN ACT OF CONGRESS APPROVED SEPTEMBER 26, 1914

Docket 5010. Complaint, July 19, 1943—Decision, Dec. 4, 1947

Where an individual engaged in the manufacture and interstate sale and distribution of a cosmetic preparation under the designation "Velskin" and sometimes "Tilson's Decleanser," through statements in advertisements in pamphlets, form letters, and other means—

- (a) Falsely represented that the skin of a person breathes and that his said preparation would allow or assist the skin so to do;
- (b) Represented that it would remove old, dry, dead skin and uncover or create new skin which would be pink, soft, and beautiful, and that it was an aid in lifting sagging muscles;
- (c) Represented that it would penetrate and uncork or open clogged pores of the skin and pull therefrom accumulations of gummy dirt and other foreign matter, and would remove various kinds of stains therefrom, including all cigarette, paint, ink, and vegetable stains; and
- (d) Represented that it would soften brittle nails and keep soft nails from becoming brittle;

The facts being that while it would have a softening effect upon the outer layers of the skin, and facilitate the removal of dirt and sebaceous material, waste matter, carbon and grease stains from the surface, it would not remove all cigarette, paint, ink, or vegetable stains, and it did not have the qualities claimed for it in other respects;

With tendency and capacity to mislead and deceive a substantial portion of the public into the erroneous belief that such representations were true, and into the purchases of substantial quantities of his said preparation:

Held, That such acts and practices, under the circumstances set forth, were all to the prejudice and injury of the public, and constituted unfair and deceptive acts and practices in commerce.

In a proceeding in which the Commission challenged as false and misleading certain advertising representations made in connection with the offer and sale of respondent's "Velskin" or "Tillson's Decleanser" cosmetic, and in which the respondent did not wish to disclose on the record the formula therefor, but revealed the same to the Commission in confidence in order to enable it to ascertain whether or not such representations constituted false advertisements within the meaning of the Federal Trade Commission Act, such formula was considered by the Commission in connection with the record in reaching its decision.

In such a proceeding in which the Commission found false and misleading respondent's advertising representations to the effect that the skin of a person breathes and that his cosmetic would assist it so to do, would uncover new skin, etc., as hereinbefore set forth; and in which the complaint also charged