

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

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the respondent with certain other false and misleading representations such as that his said preparation through its action permitted the oil glands to function naturally, removed callouses, would not irritate the most delicate skin, and was a new and scientific discovery; the record, as to some of said additional representations, failed to show the responsibility of the respondent for their dissemination, while as to others the Commission was of the opinion that the charge of falsity had not been established.

Before *Mr. George Biddle*, trial examiner.

Mr. R. A. McOuat and *Mr. Morton Nesmith*, for the Commission.

Mr. Albert E. Hausman, of St. Louis, Mo., for respondent.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that R. H. Tillson, an individual trading as Isabelle Beautetics Co. and also trading as R. H. Tillson Co., hereinafter referred to as respondent, has violated the provisions of said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, R. H. Tillson, is an individual trading as Isabelle Beautetics Co. and also trading as R. H. Tillson Co., with his place of business located at 4058 Wyoming Street, in the city of St. Louis, State of Missouri.

PAR. 2. Respondent is now, and for several years last past has been, engaged in the business of offering for sale and selling a cosmetic preparation designated "Velskin."

PAR. 3. Respondent, being engaged in business, as aforesaid, caused and causes said preparation, when sold, to be transported from his place of business located in the city of St. Louis, State of Missouri, to purchasers thereof located at points in various States of the United States other than the State from which said shipments were made, and in the District of Columbia. Respondent has, at all times mentioned herein, maintained and now maintains a course of trade in commerce in said product so distributed and sold by him between and among the various States of the United States and in the District of Columbia.

PAR. 4. In the course and conduct of his business, as aforesaid, the respondent has disseminated, and is now disseminating, and has caused and is now causing the dissemination of, false advertisements concerning the aforesaid product by the use of the United States mails and by various other means in commerce, as "commerce" is defined in the

Federal Trade Commission Act; and respondent has also disseminated and is now disseminating, and has caused and is now causing the dissemination of, false advertisements concerning said product, by various means for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of said product in commerce as "commerce" is defined in the Federal Trade Commission Act.

Among and typical, but not all inclusive, of the false, misleading, and deceptive statements and representations contained in said advertisements disseminated and caused to be disseminated, as hereinabove set out, by respondent, by the use of the United States mails, by advertisements in newspapers and magazines having a general circulation, by pamphlets, form letters and other printed or written matter, by radio broadcasts and by various other means, as aforesaid, are the following:

* * * Velskin * * * assists your skin to breathe in just the way nature intended.

When Velskin is used—this outer dead skin tissue is removed—pores are uncorked and oil glands are then permitted to function naturally.

Velskin does not oil dry skin like ordinary lotions—removes the old dead skin that is dry and sallow and underneath is your skin—soft, radiant and beautiful.

Do you have unsightly yellow fingers—stained from the use of cigarettes? Then you certainly welcome the news that such stains can be removed safely, easily and quickly with Velskin.

* * * Velskin—that scientific new lotion that is famous for assisting your skin to breathe naturally by removing the dead skin and black and white skin waste—and uncorking the pores—assisting skin glands to function in a natural manner.

And Velskin will as easily remove other stains such as * * * paint and vegetable stains.

Velskin cannot irritate the most delicate skin.

* * * just can't get down into those deep pores with OLD methods. Velskin's NEW power does the trick.

Just rub it well over one side of your nose to remove dead skin and pull the gummy dirt from clogged pores.

* * * new principle that is involved in Velskin's cleansing the skin and removing dead skin, even to the extent of bad callouses.

This pulling nature of Velskin is new to the cosmetic world.

Ink, * * * vegetable, cigarette and many other stains go quickly.

Brittle nails stay soft * * * if you use Velskin regularly.

Callouses treated like this (with Velskin) will disappear in a few nights. New Discovery.

VELSKIN—that scientific new lotion.

Beauty Shops recommend Velskin Cleanups to "uncork" those deep pores, and to aid in lifting the muscles at the same time.

VELSKIN uncorks the skin pores—those deep ones, too—allowing the natural action of the skin to eliminate that yellow skin waste that causes pallied lifeless

appearing complexions—then too VELSKIN actually rolls off that daily accumulation of dead skin and that's mighty important. There's the new skin which nature is constantly providing—radiant and beautiful, soft and cameo-like in appearance

* * *

PAR. 5. By and through the use of the statements hereinabove set forth, and others similar thereto not specifically set out herein, all of which purport to be descriptive of the therapeutic, cleansing and beneficial properties of Velskin, respondent has represented, and does now represent directly and indirectly, that Velskin assists the skin to breathe, removes outer dead skin, so that soft, radiant, and beautiful skin is exposed and permits the oil glands to function naturally; that said preparation is an aid in lifting sagging muscles; that it uncorks or opens clogged pores, penetrating into the pores, and pulls accumulations of dirt out of the pores; that said preparation removes cigarette, paint, ink, and vegetable stains from the skin; that it removes callouses and softens brittle nails and keeps them soft; that said preparation will not irritate the most delicate skin and is a new and scientific discovery.

6. The aforesaid statements and representations are grossly exaggerated, false, misleading, and deceptive. In truth and in fact, the skin does not breathe, so it could not be truthfully stated that Velskin assists the skin to breathe. While through its emollient action this preparation may facilitate the removal of the surface flakes of cuticle which the skin is constantly shedding, this action will not expose new or different skin which is soft, radiant, and beautiful. Said preparation will have no effect upon the function of the oil glands of the skin, will not aid in lifting muscles or have any beneficial effect upon sagging muscles. Its use will not uncork or open clogged pores, it will not penetrate into the pores and will not pull accumulations of dirt out of the pores. Said preparation cannot be depended upon to remove the cigarette, paint, vegetable, and all kinds of ink stains from the skin. It will have no significant effect upon callouses or brittle nails. This preparation will irritate the skin of a person possessing hypersensitivity toward one or more of its constituent ingredients. It is neither a new nor a scientific discovery.

PAR. 7. The foregoing false, deceptive, and misleading statements and representations, made by the respondent in designating and describing Velskin and its effectiveness in use, were and are calculated to have, and have had and now have, a tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that said statements and representations are true. As a result of such erroneous and mistaken belief, so

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engendered, the purchasing public is induced to purchase, and does purchase, substantial quantities of respondent's said product.

PAR. 8. The aforesaid acts and practices of the respondent, as herein alleged, are all to the prejudice and injury of the public, and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on July 19, 1943, issued and subsequently served its complaint in this proceeding upon the respondent, R. H. Tillson, an individual formerly trading and doing business as Isabelle Beautetics Co., and now trading as R. H. Tillson Co., charging him with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. After the filing of respondent's answer, testimony and other evidence in support of and in opposition to the allegations of the complaint were introduced before a trial examiner of the Commission theretofore duly designated by it, and such testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, the proceeding regularly came on for final hearing before the Commission upon the complaint, the answer thereto, testimony and other evidence, the trial examiner's recommended decision and brief in support of the complaint (no brief having been filed on behalf of respondent and oral argument not having been requested); 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, R. H. Tillson, is an individual formerly trading and doing business under the name Isabelle Beautetics Co., and now trading as R. H. Tillson Co., with his place of business located at 4058 Wyoming Street, St. Louis, Mo. Said respondent is engaged in the manufacture and in the sale and distribution of a cosmetic preparation designated "Velskin." The same preparation is also sometimes designated "Tillson's Decleanser."

PAR. 2. The respondent causes said preparation, when sold, to be transported from his place of business in St. Louis, Mo., to purchasers thereof, usually dealers, located in various States of the United States and in the District of Columbia, and respondent, at all times mentioned herein, has maintained a course of trade in said preparation

among and between the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of his business, the respondent, subsequent to March 21, 1938, has disseminated, and has caused the dissemination, by the United States mails and through the use of pamphlets, form letters, and various other means in commerce, as "commerce" is defined in the Federal Trade Commission Act, of certain advertisements concerning the preparation "Velskin," or "Tillson's Decleanser," for the purpose of inducing, and which were likely to induce, directly or indirectly, the purchase of said preparation. The respondent, subsequent to March 21, 1938, has also disseminated, and has caused the dissemination, by various means, of certain advertisements concerning said preparation for the purpose of inducing, and which were likely to induce, directly or indirectly, its purchase in commerce, as "commerce" is defined in the Federal Trade Commission Act. Among and typical of the statements and representations contained in said advertisements, which have been disseminated and caused to be disseminated as hereinabove set forth, are the following:

This NEW DISCOVERY, Velskin, removes that smothering blanket of dead skin—for new skin must breathe * * *.

As you massage gently, tiny "corks" from thousands of tiny pores are rubbed out—this allows the yellow skin waste to sweat out—and the skin to breathe * * *.

Ninety percent of us have dry skin—Velskin removes this to uncover new skin—it's always Pink, Soft and Beautiful.

Inks, Auto smut, Vegetable, Cigarette and many other stains go quickly.

INK, GREASE, CARBON, CIGARETTE, PAINT AND VEGETABLE STAINS—do your best with soap and water, then try Velskin.

* * * just can't get down into those deep pores with OLD methods. Velskin's NEW power does the trick.

Just rub it well over one side of your nose to remove dead skin and pull that gummy dirt from clogged pores.

Brittle nails stay soft * * * if you use Velskin regularly.

Beauty Shops recommend Velskin Cleanups to "uncork" those deep pores, and to aid in lifting the muscles at the same time.

PAR. 4. Through the use of the foregoing statements and representations, and others similar thereto, the respondent has represented, directly and by implication, that the skin of a person breathes, and that the preparation Velskin, or Tillson's Decleanser, will allow or assist the skin to breathe; that said preparation will remove old dry, dead skin and uncover or create new skin which will be pink, soft and beautiful; that said preparation is an aid in lifting sagging muscles; that it will penetrate and uncork, or open, clogged pores of the skin and pull therefrom accumulations of gummy dirt and other foreign

matter; that it will remove various kinds of stains from the skin, including all cigarette, paint, ink, and vegetable stains; and that it will soften brittle nails and keep soft nails from becoming brittle.

PAR. 5. The respondent did not wish to disclose on the record the formula for the preparation Velskin, or Tillson's Decleanser, and the Commission did not require him to do so. The formula was revealed to the Commission in confidence, however, for the purpose of enabling it to ascertain whether or not the advertising representations complained of constituted false advertisements within the meaning of the Federal Trade Commission Act, and the formula was considered by the Commission in connection with the record in reaching its decision.

The skin of a person does not breathe, and it cannot be truthfully stated that this or any other preparation will allow or assist the skin to breathe. Velskin, or Tillson's Decleanser, when used as directed, will have a softening effect upon the outer layers of the skin, and it will facilitate the removal of dirt and sebaceous material from the surface of the skin. Said preparation will not uncover or create new skin, however, and it will not penetrate clogged pores of the skin or pull from the pores gummy dirt or other foreign matter, nor will it lift or have any beneficial effect upon sagging muscles. The preparation will facilitate the removal of waste matter, carbon and grease stains from the surface of the skin, but it will not remove all cigarette, paint, ink, or vegetable stains; and said preparation will neither soften brittle nails nor keep soft nails from becoming brittle.

PAR. 6. The Commission therefore finds that the foregoing representations are erroneous and misleading and that the advertisements wherein they have been made constituted false advertisements.

PAR. 7. The complaint herein charged also that certain other advertising representations which have been disseminated in connection with the sale of the respondent's preparation were false, deceptive, and misleading. As to some of these additional representations the record fails to show the responsibility of the respondent for their dissemination, and as to others the Commission is of the opinion that the charge of falsity has not been established.

PAR. 8. The use by the respondent of the aforesaid false advertisements has had the tendency and capacity to mislead and deceive a substantial portion of the public into the erroneous and mistaken belief that the representations made in said advertisements were true and into the purchase of substantial quantities of the respondent's preparation.

CONCLUSION

The acts and practices of the respondent as herein found were all to the prejudice and injury of the public and constituted unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

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, the answer of the respondent, testimony and other evidence in support of and in opposition to the allegations of the complaint taken before a trial examiner of the Commission theretofore duly designated by it, and the trial examiner's recommended decision, and brief in support of the complaint (no brief having been filed on behalf of the respondent and oral argument not having been requested); and the Commission having made its findings as to facts and its conclusion that said respondent has violated the provisions of the Federal Trade Commission Act:

It is ordered, That the respondent, R. H. Tillson, individually and trading as Isabelle Beautetics Co., R. H. Tillson Co., or trading under any other name, and his agents, representatives, and employees, in connection with the offering for sale, sale and distribution of the preparation "Velskin," or "Tillson's Decleanser," or any other product of substantially similar composition or possessing substantially similar properties, whether sold under the same names or under any other name, do forthwith cease and desist from:

1. Disseminating or causing to be disseminated any advertisement by means of the United States mails, or by any means in commerce, as "commerce" is defined in the Federal Trade Commission Act, which advertisement represents, directly or by implication;

(a) That the skin of a person breathes or that respondent's preparation will assist the skin to breathe;

(b) That said preparation will uncover or create new skin;

(c) That said preparation will have any beneficial effect upon sagging muscles;

(d) That said preparation will penetrate clogged pores of the skin, or that it will remove dirt or other foreign matter from the pores of the skin;

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(e) That said preparation will remove all cigarette, paint, ink or vegetable stains from the skin;

(f) That said preparation will soften brittle fingernails or keep fingernails from becoming brittle.

2. Disseminating or causing to be disseminated any advertisement by any means for the purpose of inducing or which is likely to induce directly or indirectly, the purchase of said preparation in commerce, as "commerce" is defined in the Federal Trade Commission Act, which advertisement contains any representation prohibited in paragraph 1 hereof.

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.

Commissioner Mason not participating.

Order

IN THE MATTER OF

A. P. W. PAPER COMPANY, INC.

MODIFIED CEASE AND DESIST ORDER¹*Docket 4747. Order, Dec. 18, 1947*

Order, following remand to the Commission by the Circuit Court of Appeals for the Second Circuit on April 16, 1947, to consider the desirability of modifying the modified order entered by the Commission on August 12, 1946, 43 F. T. C. 70; and following stipulation entered into between the associate general counsel of the Commission, and respondent, etc., as hereinbelow set out—

Modifying the aforesaid modified order, so as to prohibit respondent, its officers, etc., in connection with the offer, etc., of respondent's toilet tissue and paper towels in commerce, from using, subject to the permissible limits prescribed by the statutes specified, the words "Red Cross," etc., on its products, or using said words or said mark in selling or advertising the same, unless subject to clarifying and explanatory matter as below set forth.

Before *Mr. Miles J. Furnas*, trial examiner.

Mr. Marshall Morgan for the Commission.

Sullivan & Cromwell, of New York City, for respondent.

MODIFIED ORDER TO CEASE AND DESIST

This matter having been remanded to the Federal Trade Commission by the Circuit Court of Appeals for the Second Circuit on April 16, 1947, to consider the desirability of modifying the modified order entered by the Commission herein on August 12, 1946; and a stipulation having been entered into by and between Walter B. Wooden, associate general counsel of the Federal Trade Commission and the respondent, A. P. W. Paper Co., Inc., providing that subject to the approval of the Federal Trade Commission, the following modified order, prepared and agreed upon with due notice to and in pursuance of conferences and collaboration had with respondent herein may be entered and issued by the Commission in this proceeding, and be thereafter duly served upon respondents and the Commission also

¹ The original findings and cease and desist orders, made as of January 7, 1944, were reported in 38 F. T. C. 1. Said order was reversed by the Circuit Court of Appeals on May 17, 1945, in *A. P. W. Paper Co., Inc., v. Federal Trade Commission* (149 F. (2d) 424, 40 F. T. C. 921), and the case remanded to the Commission, following the holding of the court that the order went beyond permissible limits in forbidding any use of the words and mark. On petition for certiorari, the Supreme Court, on May 6, 1946, in *Federal Trade Commission v. A. P. W. Paper Co., Inc.* (328 U. S. 193), with the case before it, held, that without undertaking to prescribe the order which the Commission should enter, it could not, under the facts of the case, absolutely forbid the use of the words and the symbol by respondent.