

File

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	Civil No. CA 3-81-0157-H
)	
v.)	Filed: <u>February 2, 1981</u>
)	
REVCO D.S., INC. and)	
ZALE CORPORATION)	
)	
Defendants.)	

COMPLAINT

The United States of America, plaintiff, by its attorneys, acting under the direction of the Attorney General of the United States, brings this action to obtain equitable relief against the defendants named herein and complains and alleges as follows:

I.

JURISDICTION AND VENUE

1. This Complaint is filed and this action is instituted under Section 15 of the Clayton Act, as amended, 15 U.S.C. § 25, in order to prevent and restrain the violation by the defendants, as hereinafter alleged, of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18.

2. Each of the defendants transacts business and is found within the Northern District of Texas.

II.

DEFINITIONS

3. As used herein the term:

- (a) "Dallas-Fort Worth area" means the geographic area which includes Dallas and Tarrant counties

and the incorporated cities of Lewisville and Plano in the State of Texas;

- (b) "El Paso area" means the geographic area which includes the county of El Paso in the State of Texas;
- (c) "Tyler area" means the geographic area which includes the county of Smith in the State of Texas;
- (d) "Ethical drugs" (also known as prescription drugs) means those drugs that are restricted to sale only on a physician's, dentist's or other licensed practitioner's prescription, as provided by federal law and the laws of the State of Texas; and
- (e) "Pharmacy" means those establishments that are licensed to sell ethical drugs at retail to the general public.

III.

DEFENDANTS

4. Revco D.S., Inc. ("Revco") is named a defendant herein. Revco is a corporation organized and existing under the laws of the State of Michigan and maintains its principal place of business in Twinsburg, Ohio. For the fiscal year ending May 31, 1980, Revco had total corporate sales of \$1,092,797,000. Revco is engaged principally in retail drug sales, including the sale of ethical drugs to the general public through pharmacies located in its drug stores. As of August 15, 1980, Revco operated approximately 1,276 pharmacies in 24 states. As of December 11, 1980, Revco operated 58

pharmacies in the State of Texas, including 27 in the Dallas-Fort Worth area, 5 in the El Paso area and 3 in the Tyler area, and its pharmacies had sales of ethical drugs in the Dallas-Fort Worth area of approximately \$5,381,129, in the El Paso area of approximately \$966,821, and in the Tyler area of approximately \$257,003.

5. Zale Corporation ("Zale") is named a defendant herein. Zale is a corporation organized and existing under the laws of the State of Texas and maintains its principal place of business in Dallas, Texas. Zale owns and controls two wholly-owned subsidiaries, Skillern & Sons, Inc., and Skillern & Sons New Mexico, Inc., both Texas corporations, which are operated as the Skillern Drug Division of Zale Corporation ("Skillern's"). For the fiscal year ending March 31, 1980, Skillern's had total sales of \$148,700,000. Skillern's is engaged principally in retail drug sales, including the sale of ethical drugs to the general public through pharmacies located in its drug stores. As of November 10, 1980, Skillern's operated some 144 pharmacies in the states of Texas and New Mexico, including 75 in the Dallas-Fort Worth area, 15 in the El Paso area and 3 in the Tyler area. In 1980, Skillern's had sales of ethical drugs in the Dallas-Fort Worth area of approximately \$21,966,200, in the El Paso area of approximately \$2,860,000, and in the Tyler area of approximately \$721,000.

IV.

TRADE AND COMMERCE

6. Pharmacies are the retail outlets through which ethical drugs are sold to the general public in the Dallas-Fort Worth, El Paso and Tyler areas.

7. In 1980, there were approximately 563 pharmacies in the Dallas-Fort Worth area. Of these, Revco operated 27, and Skillern's operated 75. Two hundred and twelve of the remaining pharmacies were operated by companies which operated four or more pharmacies and the remaining were operated by companies operating three or fewer pharmacies.

8. In 1980, there were approximately 81 pharmacies in the El Paso area. Of these, Revco operated 5, Skillern's operated 15, and Walgreens operated 9. The remaining pharmacies were operated by companies which operated five or fewer pharmacies.

9. In 1980, there were approximately 33 pharmacies in the Tyler area. Of these, Revco operated 3, Skillern's operated 3, and Eckerd and Drug Sav operated 4 each. The remaining pharmacies were operated by companies which operated one or two pharmacies.

10. In 1980, the total dollar volume of ethical drug sales in the Dallas-Fort Worth area was approximately \$138,390,991. Of this amount, Revco, the sixth-largest seller, accounted for approximately 3.9 percent of ethical drug sales and Skillern's, the largest seller, accounted for approximately 15.9 percent. Combined, Revco and Skillern's would have the largest share with about 19.8 percent of these sales and the four largest companies would have approximately 45.3 percent of these sales.

11. In 1980, the total dollar volume of ethical drug sales in the El Paso area was approximately \$15,993,802. Of this amount, Revco, the fifth-largest seller, accounted for approximately 6 percent of ethical drug sales and Skillern's,

the largest seller, accounted for approximately 17.9 percent. Combined, Revco and Skillern's would have the largest share with about 23.9 percent of the sales and the four largest companies would have approximately 53 percent of these sales.

12. In 1980, the total dollar volume of ethical drug sales in the Tyler area was approximately \$7,200,000. Of this amount, Revco, the fourth-largest company, accounted for approximately 3.6 percent of ethical drug sales and Skillern's, the third-largest company, accounted for approximately 10 percent. Combined, Revco and Skillern's would have the largest share with about 13.7 percent of these sales.

13. In the Dallas-Fort Worth, El Paso and Tyler areas, pharmacies compete with each other. Thus, Revco and Skillern's are in substantial competition with each other in the retail sale of ethical drugs in the Dallas-Fort Worth, El Paso and Tyler areas.

14. Pharmacies in the Dallas-Fort Worth, El Paso and Tyler areas, including those operated by Revco and Skillern's, purchase substantial quantities of ethical drugs manufactured in states other than Texas. Such ethical drugs are shipped by manufacturers from outside the State of Texas directly to pharmacies or to company-owned pharmacy warehouses for subsequent distribution to pharmacies in the Dallas-Fort Worth, El Paso and Tyler areas. Ethical drugs are also sold by manufacturers located outside the State of Texas to wholesalers in Texas who resell them to retail pharmacies in the Dallas-Fort Worth, El Paso and Tyler areas. Such ethical drugs are usually purchased by and shipped to pharmacies in the Dallas-Fort Worth, El Paso and Tyler areas in anticipation of the needs of their customers. Thus, Revco and Skillern's are engaged in, and their activities affect, interstate commerce.

VIOLATION ALLEGED

15. On or about December 1, 1980, Revco entered into an agreement with Zale to acquire all of the Skillern's assets. The effect of this acquisition, should it be consummated, may be substantially to lessen competition or to tend to create a monopoly with respect to the above-described trade and commerce in violation of Section 7 of the Clayton Act, in the following ways, among others:

- (a) competition between Revco and Skillern's in the retail sale of ethical drugs will be eliminated in the Dallas-Fort Worth, El Paso and Tyler areas;
- (b) competition generally in the retail sale of ethical drugs will be substantially lessened in the Dallas-Fort Worth, El Paso and Tyler areas; and
- (c) concentration in the retail sale of ethical drugs will be increased in the Dallas-Fort Worth, El Paso and Tyler areas.

PRAYER

WHEREFORE, plaintiff prays:

1. That the aforesaid proposed acquisition by Revco of the Skillern's assets be adjudged and decreed to be unlawful, in violation of Section 7 of the Clayton Act.

2. That Revco and Zale be permanently enjoined from consummating the above-described acquisition agreement or any other agreement having a similar purpose or effect.

3. That a preliminary injunction be issued enjoining the defendants from proceeding with the consummation of the aforementioned acquisition agreement or any other agreement having a similar purpose or effect, pending the outcome of this litigation.

4. That plaintiff have such other and further relief that the Court may deem just and proper.


5. That the plaintiff recover the costs of this action.


SANFORD M. LITVACK
Assistant Attorney General


MARY COLEEN T. SEWELL


JOSEPH H. WIDMAR

LARRY R. PATTON


DONALD C. KLAWITER
Attorneys, United States
Department of Justice

Attorneys, United States
Department of Justice

Antitrust Division
1100 Commerce Street
Room 8C6
Dallas, Texas 75242
(214) 767-8051

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS

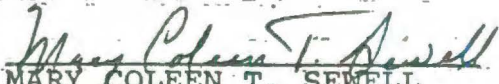
UNITED STATES OF AMERICA,)
)
 Plaintiff,) Civil No.
)
 v.) Filed: _____
)
 REVCO D.S., INC. and)
 ZALE CORPORATION)
)
 Defendants.)

AFFIDAVIT OF MARY COLEEN T. SEWELL

CITY OF DALLAS)
) ss
 STATE OF TEXAS)

I, Mary Coleen T. Sewell, declare, under penalty of perjury under the laws of the United States of America, that the foregoing is true and correct:

I am an attorney employed by the Antitrust Division, United States Department of Justice; I have been actively engaged in the preparation of this proceeding; I have read the foregoing Complaint and know its contents and am familiar with the subject matter thereof; I am informed and believe that the allegations of fact contained therein are true; and the sources of my information are written statements, data, and documents furnished to the Department of Justice by defendants Revco D.S., Inc. and Zale Corporation, and information obtained from numerous trade and industry sources.


MARY COLEEN T. SEWELL
Attorney
Antitrust Division