

IN THE MATTER OF
THE NORTHWEST TILE & MANTEL CONTRACTORS'
ASSOCIATION ET AL.

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

Docket 1764. Complaint, Apr. 21, 1930¹—Decision, June 26, 1930.

Where an organization, the members of which were engaged in the purchasing, placing, and laying of tiles in various States; and said members, in pursuance of an agreement and undertaking to cooperate to (1) prevent manufacturers from shipping and selling tile to nonmember contractors in the business and States concerned, or (2) prevent such manufacturers from making shipments to such contractors except at prices substantially higher than those at which the product was sold to members or (3) prevent nonmember contractors from securing contracts, or from laying and placing tiles in the securing or fulfillment thereof, through cooperation with union tile setters or union representatives,

- (a) Coerced and attempted to coerce manufacturers into refusing (1) to supply other contractors with tile or (2) so to supply them except at prices substantially higher than those charged the members, and prevented nonmember contractors from securing contracts or procuring necessary labor incident to the securing and carrying out of contracts, through cooperation with union tile setters or union representative, with the common purpose of restricting the purchase, laying, and placing of tiles throughout the Northwest Pacific States concerned to their own members;
- (b) Notified manufacturers or their representatives that if such manufacturers sold and supplied tile to nonmember contractors, they, the members, would cease purchasing therefrom; and
- (c) Refused to admit to membership in the organization other contractors desiring to join in order to obtain tile at substantially the same prices paid by the members, with intent of restricting the purchase, laying, and placing of tile to present members;

With the result that competition in the purchase, laying, and placing of tiles in the States concerned was substantially lessened, manufacturers were prevented from selling their tile to nonmember contractors or prevented from so selling same except at prices substantially higher than those at which sold to members, cost of placing and laying tile was enhanced over that which would prevail under normal, natural, and open competition, and the natural flow of commerce in said commodities and the channels of interstate trade was hindered; all to the prejudice of the public and competitors:

Held, That such practices, under the circumstances set forth, constitute unfair methods of competition.

Mr. Ellis De Bruler for the Commission.

Mr. H. A. P. Myers, of Seattle, Wash., and *Mr. John R. Latour-elle*, of Portland, Oreg., for respondents.

¹ Amended.

SYNOPSIS OF COMPLAINT²

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondents, the Northwest Tile & Mantel Contractors' Association, its officers and members, engaged in the business of purchasing, placing and laying tile in various States, and with offices and places of business variously in Portland, Seattle, Spokane, and Tacoma,³ with combining or conspiring to cut off or restrict competitors' sources of supply, labor and business, in violation of the provisions of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce.

Respondents, as charged, engaged as above set out, "for more than two years last past have agreed and undertaken to cooperate with each other to prevent manufacturers of tile from selling and shipping or causing to be shipped tile to tile and mantel contractors engaged in the business of purchasing, laying, and placing tile in the States of Washington and Oregon who are not members of The Northwest Tile & Mantel Contractors' Association; or to prevent manufacturers of tile from selling and shipping or causing to be shipped tile to tile and mantel contractors engaged in the business of purchasing, laying and placing tile in the States of Washington and Oregon, except at prices substantially higher than the prices at which said tile is sold to the members of respondent association, or to prevent nonassociation tile contractors from securing contracts, or to prevent them from laying and placing tile by interfering with the procuring of the necessary labor incident to the laying and placing of tile in the securing or in the fulfillment of contracts by cooperation with labor union tile setters or representatives of such unions".

Respondents further, as charged, engaged, as above set forth, in order to carry out and make effective the aforesaid undertaking and agreement have cooperated together and with others in that regard in the following acts and practices:

(a) Members of respondent association, acting together and with common purpose of restricting purchase, laying, and placing of tile throughout the Northwest Pacific States to member contractors, and preventing purchase, etc., by nonmember contractors, undertake to and do (1) coerce manufacturers into refusing to supply said last-named contractors with tile, or into refusing so to supply them except at prices substantially higher than those extended by such

²As amended.

³The various respondents joined and their places of business are set forth in the findings, *infra*, at pages 117-119.

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manufacturers to respondents, or (2) prevent nonmember contractors from securing contracts or from laying and placing tile by interfering with the procuring of necessary labor incident thereto, in the securing or in the fulfillment of contracts, through cooperation with labor union tile setters or their representatives;

(b) Respondents notify tile manufacturers or their representatives that if they sell and supply nonmember contractors, respondents will cease purchasing tile from them;

(c) Respondents, with purpose and intent of restricting purchase, etc., of tile to present members, refuse to admit to their association, other contractors desirous of joining in order to obtain tile or to obtain same at substantially same prices at which obtained by respondents.

The result and effect of the foregoing practices, as alleged, "has been and now is substantially to lessen and restrict competition in the purchase, laying, and placing of tile in the Northwest Pacific States; to prevent manufacturers of tile from selling the same to tile contractors not members of respondent association or to prevent said tile manufacturers from selling tile to nonassociation tile contractors except at prices substantially higher than the prices at which said tile is sold to members of respondent association; to enhance the cost of placing and laying tile above the prices which would prevail therefor under normal, natural and open competition, and to hinder the natural flow of commerce in said commodity in the channels of interstate trade," and "the above acts and things done by respondents, as charged, are all to the injury and prejudice of the public and respondents' competitors and constitute unfair methods of competition in commerce within the intent and meaning of section 5."

Upon the foregoing complaint, the Commission made the following

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties and for other purposes", the Federal Trade Commission issued and served a complaint upon all of the parties named as respondents in the caption hereof, charging them with the use of unfair methods of competition in commerce, in violation of the provisions of said act, together with a notice that within 30 days after the service of the complaint an answer to the same should be filed with the Commission, and with a copy of Rule III of the Rules of Practice adopted by the Commission with respect to answers and failure to answer.

Thereafter, all of the respondents mentioned in the caption hereof, excepting F. T. Crowe & Co., filed an answer denying all the material allegations of the complaint contained in paragraphs 3, 4, and 5, and F. T. Crowe & Co. answered by stating that it had no interest as to whether or not orders to cease and desist were entered in the above-entitled matter.

Thereafter, an amended complaint was issued and served upon all of the respondents, and all respondents, excepting F. T. Crowe & Co., filed an answer to the amended complaint stating that they refrain from contesting the proceeding, and F. T. Crowe & Co. filed no answer or appearance whatsoever to the amended complaint. No other answer or return has been filed by said respondents, or any of them, to the amended complaint and the time for appearance, answer, and return has not fully expired.

The record shows that all of the respondents refrain from contesting the allegations contained in the amended complaint and waive a hearing on the charges therein set forth.

Thereupon, this proceeding came on for decision and the Commission having duly considered the entire record, and being fully advised in the premises, makes this its findings of the facts as stated in the complaint and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, The Northwest Tile & Mantel Contractors' Association, is a voluntary unincorporated organization with a membership composed of persons, partnerships and corporations engaged in the business of purchasing, placing, and laying tile in various States of the United States, and in shipping and transporting and/or causing to be shipped or transported said tile and other materials or supplies incident to the placing or laying of said tile from the places of manufacture of the same in various States of the United States, other than the State or States in which said members have their respective places of business, into the State or States in which said members have their respective places of business, and in the course and conduct of their business as aforesaid each and every member of the said association purchases tile and other materials and supplies incident to the placing or laying thereof and transports or causes to be transported the said tile and other materials from the places of manufacture of the same in States other than those in which said members have their respective places of business to States in which said members have their respective places of business, all in competition with other persons, partnerships, and corporations likewise engaged.

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Respondents, E. H. Roedel, A. P. Robinson, George Heard, and Max M. Stockert are, respectively, the president, vice president, treasurer and secretary of respondent, The Northwest Tile & Mantel Contractors' Association.

Respondents, Field Art Tile Co., a corporation under the laws of the State of Oregon, Northwest Tile & Mantel Co., a copartnership, Roedel Tile Co., a corporation under the laws of the State of Oregon, and The Fred W. Wagner Tile Co., a corporation under the laws of the State of Washington, are members of aforesaid respondent, The Northwest Tile & Mantel Contractors' Association, and are tile and mantel contractors engaged in the business of purchasing, laying, and placing tile, having offices and places of business respectively at 330 East Broadway, 114 Halsey Street, 209 South Broadway, 391 Oak Street, and 307 Fitzpatrick Building in the city of Portland, State of Oregon, and, in the course and conduct of their business as aforesaid, each and every one of said respondents purchase tile for use in placing and laying the same in the State of Oregon and in various other States of the United States and transports or causes said tile to be transported from the places of manufacture of the same in various States of the United States other than the State of Oregon into the State of Oregon, and transports or causes to be transported certain of said tile and other materials and supplies incident to the laying and placing of the same from the State of Oregon into and through various States of the United States other than the State of Oregon, all in competition with other persons, partnerships, and corporations likewise engaged.

Respondents, Robinson Tile & Mantel Co., a corporation under the laws of the State of Washington; Rogers Tile Co., a corporation under the laws of the State of Washington; Shippen Tile Co., a corporation under the laws of the State of Washington, and University Brick & Tile Co., a corporation under the laws of the State of Washington, are members of aforesaid respondent, The Northwest Tile & Mantel Contractors' Association, and are tile and mantel contractors engaged in the business of purchasing, laying, or placing tile, having offices and places of business respectively at 600 Eighth Avenue North, 117 Yale Avenue North, 620 Eastlake Avenue, and 1215 East Fortieth Street, in the city of Seattle, State of Washington, and respondents, H. G. Lanahan, trading under the name and style of H. G. Lanahan & Co., and F. T. Crowe & Co., a corporation under the laws of the State of Washington, members of aforesaid association, The Northwest Tile & Mantel Contractors' Association, are tile and mantel contractors engaged in the business of purchasing, laying, and placing tile, having offices and places

of business respectively at 324 North Division Street, in the city of Spokane, State of Washington, and at 1117 Dock Street, in the city of Tacoma, State of Washington, and in the course and conduct of their business as aforesaid each and every one of said respondents purchases tile for use in placing and laying the same in the State of Washington and in various other States and transports or causes said tile to be transported from the places of manufacture of the same in various States of the United States other than the State of Washington into the State of Washington, and transports or causes to be transported certain of said tile and other materials and supplies incident to the laying and placing of the same from the State of Washington into and through various States of the United States other than the State of Washington, all in competition with other persons, partnerships, and corporations likewise engaged.

PAR. 2. For more than two years last past respondents have agreed and undertaken to cooperate with each other to prevent manufacturers of tile from selling and shipping or causing to be shipped tile to tile and mantel contractors engaged in the business of purchasing, laying, and placing tile in the States of Washington and Oregon who are not members of The Northwest Tile & Mantel Contractors' Association, or to prevent manufacturers of tile from selling and shipping or causing to be shipped tile to tile and mantel contractors engaged in the business of purchasing, laying, and placing tile in the States of Washington and Oregon, except at prices substantially higher than the prices at which said tile is sold to the members of respondent association, or to prevent nonassociation tile contractors from securing contracts, or to prevent them from laying and placing tile by interfering with the procuring of the necessary labor incident to the laying and placing of tile in the securing or in the fulfillment of contracts by cooperation with labor union tile setters or representatives of such unions.

PAR. 3. For more than two years last past, respondents, in order to carry out and make effective the aforesaid undertaking and agreement, have cooperated together and with others in that regard in the following acts and practices:

(a) The members of respondent association, acting in unison, with a common purpose of restricting the purchase, laying, and placing of tile throughout the Northwest Pacific States to those tile and mantel contractors who are members of the Northwest Tile & Mantel Contractors' Association and of preventing the purchase, placing, and laying of tile by any tile and mantel contractors not members of respondent association attempt to and do coerce tile manufacturers into refusing to supply said other tile and mantel contractors with

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tile, or attempt to and do coerce tile manufacturers into refusing to supply said other tile and mantel contractors with tile except at prices substantially higher than the prices at which said tile manufacturers sell their products to respondents, or prevent nonassociation tile contractors from securing contracts, or prevent them from laying or placing tile by interfering with the procuring of the necessary labor incident to the laying and placing of tile in the securing or in the fulfillment of contracts by cooperation with labor union tile setters or representatives of such unions.

(b) Respondents notify tile manufacturers or their representatives that if said manufacturers sell and supply tile and mantel contractors not members of respondent association with tile that respondents will cease purchasing tile from such tile manufacturers.

(c) Respondents, with the purpose and intent of restricting the purchase, laying, or placing of tile to present members of their association, refuse to admit to membership in said association other tile and mantel contractors who are desirous of joining said association in order that they may obtain tile or that they may obtain tile at substantially the same prices at which respondents obtain it.

The result and effect of the foregoing practices has been and now is substantially to lessen and restrict competition in the purchase, laying and placing of tile in the Northwest Pacific States; to prevent manufacturers of tile from selling the same to tile contractors not members of respondent association or to prevent said tile manufacturers from selling tile to nonassociation tile contractors except at prices substantially higher than the prices at which said tile is sold to members of respondent association; to enhance the cost of placing and laying tile above the prices which would prevail therefor under normal, natural, and open competition, and to hinder the natural flow of commerce in said commodity in the channels of interstate trade.

PAR. 4. The Commission also further finds the facts to be that all such acts and practices of respondents hereinabove referred to, and as hereinabove fully set out and described, are all to the prejudice of the public and of respondents' competitors and constitute unfair methods of competition in commerce.

CONCLUSION

By reason of aforesaid acts and practices of respondents, as hereinabove fully set out, it is concluded by the Commission that the acts and practices of respondents are clearly unfair methods of competition in interstate commerce, and that such acts, practices, and things, hereinabove fully set out are to the prejudice and injury of the

public, and that such acts constitute unfair methods of competition in interstate commerce in violation of section 5 of the act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes".

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the amended complaint of the Commission and upon the answer of the respondents, refraining from contesting the allegations contained in the amended complaint and waiving a hearing upon the charges set forth therein, as fully appears from the record herein, and the Commission having made its findings as to the facts with the conclusion that the respondents, as named in the caption hereof, have violated the provisions of the act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes",

It is now ordered, That the respondents named in the caption hereof, their agents, servants and employees, and all persons acting through them or any of them, or under their control or direction, or any of them, cease and desist:

(1) From agreeing, undertaking, and cooperating with each other to prevent manufacturers of tile from selling and shipping or causing to be shipped tile to tile and mantel contractors engaged in the business of purchasing, laying, and placing tile in the States of Oregon and Washington who are not members of The Northwest Tile & Mantel Contractors' Association; or to prevent manufacturers of tile from selling and shipping or causing to be shipped tile to tile and mantel contractors engaged in the business of purchasing, laying, and placing tile in the States of Washington and Oregon, except at prices substantially higher than the prices at which said tile is sold to the members of the respondent association, or to prevent nonassociation tile contractors from securing contracts, or to prevent them from laying and placing tile by interfering with the procuring of the necessary labor incident to the laying and placing of tile in the securing or in the fulfillment of contracts by cooperation with labor union tile setters or representatives of such unions.

(2) From agreeing, undertaking, and cooperating with each other in preventing the purchase, placing, and laying of tile in the Northwest Pacific States by nonassociation members, or those tile contractors who are not members of The Northwest Tile & Mantel Contractors' Association.

(3) From agreeing, undertaking, and cooperating with each other to coerce tile manufacturers into refusing to supply nonassociation

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members, or those not members of The Northwest Tile & Mantel Contractors' Association, with tile except at prices substantially higher than the prices at which said tile manufacturers sell their products to said respondents who are members of The Northwest Tile & Mantel Contractors' Association.

(4) From agreeing, undertaking, and cooperating with each other to prevent nonassociation tile contractors, or those contractors who are not members of The Northwest Tile & Mantel Contractors' Association, from securing contracts.

(5) From agreeing, undertaking, and cooperating with each other to prevent nonassociation tile contractors, or those who do not belong to The Northwest Tile & Mantel Contractors' Association, from laying and placing tile by interfering with the procuring of the necessary labor incident to the laying and placing of tile in the securing or in the fulfillment of contracts by cooperation with labor union tile setters or representatives of such unions.

(6) From agreeing, undertaking, and cooperating with each other to and notifying tile manufacturers or their representatives that if said manufacturers sell and supply tile and mantel contractors not members of the Northwest Tile & Mantel Contractors' Association with tile, that the respondents will cease purchasing tile from such tile manufacturers.

(7) From agreeing, undertaking, and cooperating with each other, with the purpose and intent of restricting the purchase, laying, or placing of tile to present members of The Northwest Tile & Mantel Contractors' Association, in refusing further membership in said association.

It is further ordered, That the respondents named in the caption hereof, shall within 60 days after the service upon them of a copy 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 the order to cease and desist hereinbefore set forth.

Complaint

IN THE MATTER OF

J. A. STRANSKY AND L. G. STRANSKY, COPARTNERS
TRADING UNDER THE FIRM NAME AND STYLE OF J.
A. STRANSKY MANUFACTURING COMPANY

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

Docket 1612. Complaint, Apr. 25, 1929—Decision, June 30, 1930

Where a firm engaged in the manufacture and sale of a so-called "vaporizer and decarbonizer" for automobiles,

(a) Made such statements in advertisements directed to securing salesmen or agents to purchase and sell said device, as, "New patented fuel vaporizer guaranteed to save up to 50 per cent in gasoline; 40 miles per gallon made with Ford car", "Ford runs 57 miles on gallon of gasoline", "enables Ford cars to make as high as 61 miles to the gallon", "Why not buy gasoline for 10 cents per gallon, new invention, cuts fuel bill 25 to 50 per cent"; and others of similar tenor, published along with alleged unsolicited testimonials, the facts being that said representations were exaggerated and much in excess of possible accomplishment through said device; and

(b) Falsely represented said device would remove carbon, prevent spark trouble, overheating, and make engine start more easily;

With capacity and tendency to mislead and deceive purchasers and prospective purchasers:

Held, That such practices, under the circumstances set forth, were to the prejudice of the public and competitors and constituted unfair methods of competition.

Mr. PGad B. Morehouse for the Commission.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondents, partners engaged in the manufacture and sale of a device, designated as a "vaporizer and decarbonizer" for automobiles, and with principal place of business at Pukwana, S. Dak., with advertising falsely or misleadingly, in violation of the provisions of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce.

Respondents, as charged, in advertising their aforesaid device in newspapers, magazines, periodicals, and other publications of general circulation and in order blanks, catalogues, pamphlets, letters, etc.,