

Complaint

16 F. T. C.

IN THE MATTER OF
METAL TILE CONSTRUCTION COMPANY, INC.

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

Docket 1955. Complaint, June 1, 1931—Decision, May 31, 1932

Where a corporation engaged in importing a Belgian wall and ceiling covering composed of zinc plates so enameled, stamped, and made as to imitate different colors, and mortar lines of genuine tile, and exact appearance thereof installed in place, and in sale of said product to jobbers, contractors, builders, and public generally, described same as "Belgian Tile" or "Belgiantile" in advertisements in periodicals of national circulation, and in catalogues, circulars, leaflets, etc., circulated among trade and general public; with tendency and capacity to deceive purchasers into believing said product to be that kiln baked, clay tile installed and set by tile setters, and generally understood from the word, and to divert to it trade of competitors engaged in sale of genuine imported Belgian, or domestic tile, as the case might be:

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. Alfred M. Craven and Mr. J. Butler Walsh for the Commission.

Mr. Max Wittenberg, of Brooklyn, N. Y., for respondent.

Mr. Sol A. Herzog, of New York City, for Associated Tile Manufacturers, Inc., intervenor.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent, a New York corporation long engaged in the importation from Belgium of a zinc covered sheet so prepared as to imitate tiling, and in the sale of said tile and tiling substitute to jobbers, contractors, builders, and the general public for walls and ceilings of bathrooms, kitchens, breakfast rooms, as well as in hospitals, shops, and hotels, and with principal place of business in New York City, 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; in that in its advertising catalogues, circulars, leaflets and other like literature it falsely and misleadingly designates aforesaid product as "Belgian Tile"; with tendency and capacity to deceive purchasers thereof into believing same to be tile, and to divert to it trade of competitors engaged in sale of similar products, truthfully advertised and

described, and trade of competitors engaged in manufacture and sale of genuine tile; to the prejudice of the public and competitors.

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" (38 Stat. 719), the Federal Trade Commission, on the 1st day of June, 1931, issued and served its complaint against the respondent Metal Tile Construction Co., Inc., charging it with the use of unfair methods of competition in commerce, in violation of the provisions of said act.

Respondent having entered its appearance and filed its answer to the said complaint, hearings were had before a trial examiner therefore duly appointed, and testimony was heard and evidence received in support of the charges stated in the complaint and in opposition thereto. Thereafter, this proceeding came on regularly for final hearing, and the Commission having duly considered the record and being now fully advised in the premises, makes this its report, stating its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Metal Tile Construction Co., Inc., is a corporation organized and existing under the laws of the State of New York, with its principal place of business in the City of New York. It is now, and has been for many years, engaged in the business of importing from Belgium and selling to jobbers, contractors, builders, and the public generally, a product used for the covering of walls and ceilings. Said respondent causes said product, when sold, to be transported in interstate commerce from its principal place of business into and through numerous States of the United States, other than New York, to the purchasers thereof, at their respective points of location. In the course and conduct of its business, respondent is and has been, in competition with other individuals, partnerships, and corporations located and doing business in the United States, engaged in the sale and transportation, in interstate commerce between and among the various States of the United States, of tiles, which are prepared and shaped accordingly to the purpose required, out of clay and baked in kilns, and which are properly described and designated as tile.

Conclusion

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PAR. 2. Respondent solicits its business by advertising in periodicals of national circulation and by the circulation among the trade and general public of catalogues, circulars, leaflets, and other like literature, in all of which advertising it describes and designates the product imported and sold by it as "Belgian Tile" or sometimes as "Belgiantile".

PAR. 3. "Tile" as generally understood in the building trades and by the general public is a clay product, shaped in comparatively small sized units and baked in a kiln. Tile for the covering of walls and ceilings is usually shaped into units of about 4 inches square, and is installed upon the proper base by being set in cement by workmen who are termed "tile setters". Most of the tile used in the United States is of domestic manufacture, there being in the United States approximately a hundred tile factories with an output in value exceeding fifteen million dollars. A considerable amount of tile sold in the United States is imported from other countries, including Belgium. The tile imported and sold in this country from Belgium is called "Belgian Tile" and the tile imported from other countries is usually designated by the name of the country of manufacture.

The product of the respondent is a zinc plate upon which is imposed a coat of enamel, varying in color to imitate the common colors of genuine tile, whether domestic or imported. The size of the zinc plate ordinarily sold by respondent is 17 by 21 inches, which is in close approximation to the size of twenty units of tile, each 4 1/4 by 4 1/4 inches, set or installed upon a wall or ceiling. In the manufacture of respondent's product, a stamp is used, whereby mortar lines are made in imitation of the mortar lines appearing on the installation of genuine tile. A plate of respondent's products 17 by 21 inches in dimension, is an exact imitation of twenty units of tile each 4 1/4 by 4 1/4 inches installed on a wall or ceiling.

PAR. 4. Designation by the respondent of its product as "Belgian Tile" or "Belgiantile" as set out in paragraph 2 hereof, is false and misleading, and has the tendency and capacity to deceive the purchasers of said product into the belief that respondent's said product is tile. Said description also has the tendency and capacity to divert to the respondent the trade of competitors engaged in selling tile, both that imported from Belgium as well as that of domestic manufacture.

CONCLUSION

The practices of the said respondent, under the conditions and circumstances described in the foregoing findings, are to the prejudice of the public and of respondent's competitors, and constitute a

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Order

violation 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."

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, the testimony and briefs by counsel for the Commission and for the respondent, and the Commission having made its findings as to the facts and its conclusion that said respondent has violated 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",

It is now ordered, That the respondent, Metal Tile Construction Co., Inc., its officers, agents and employees, in connection with the sale or offering for sale of its products in interstate commerce between and among the various States of the United States and in the District of Columbia, cease and desist from—

Describing the product of respondent as "Belgian Tile" or "Belgiantile" or using, in the descriptions of the product sold by respondent, the word "tile," unless in immediate conjunction therewith there appear the words "imitation tile made of metal."

It is further ordered, That the said respondent shall, within 30 days after the service upon it of a copy 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 the order to cease and desist hereinbefore set forth.

IN THE MATTER OF

UNITED TAILORING COMPANY, INC., CURTIS CLOTHING CORPORATION, AND VICTOR KLEIN, HERBERT KLEIN, AND ARTHUR KLEIN, DOING BUSINESS UNDER TRADE NAME AND STYLE OF CONTINENTAL TAILORING 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 1947. Complaint, May 8, 1931—Decision, June 3, 1932

Where a corporation, several subsidiaries, and three individuals engaged in sale of men's ready-made clothing direct to public through said various companies, which they owned, officered, controlled, and operated, together with an unincorporated business, as part of a common enterprise, but held out to the public under their different corporate and trade names as separate and independent,

- (a) Represented through their various agents or solicitors that garments furnished pursuant to orders would be tailored to the individual's measurements, and supplied, for their agents' use and display, order blanks with provision for measurements necessary for a made-to-order suit, and stated through printed receipt forms that clothes would be cut on the block system and adjusted to measurements called for, facts being they filled orders either by selecting from their common stock, a ready-made garment which in a general way came near the measurements concerned, or, lacking such, by supplying clothes with no regard therefor, and thus supplied short men with clothes for tall men, and thin men with those for stout men, and vice versa, and thereby grotesquely outfitted purchasers carefully measured and ordered for; with effect of misleading and deceiving public into believing garments in question were tailor made in accordance with individual measurements of the purchaser, and of diverting trade to them from competitors offering the consuming public through agents or otherwise, suits of greatly superior quality, at similar prices, and in fact so made, and cut according to the block system as commonly understood, and with capacity and tendency so to do;
- (b) Represented through their solicitors that suits ordered by purchaser would be made out of cloth corresponding with the sample selected by latter, facts being garments were made of cheaper and inferior cloth and in many instances of such poor quality that purchasers were unable and unwilling to use them and necessarily sustained loss of money paid, with no return; with effect of misleading and deceiving public, and of diverting trade to them from competitors in fact making garments in accordance with purchaser's selection or designation, and with capacity and tendency so to do;
- (c) Falsely represented through their solicitors that alterations would be made at a new store about to be opened; with effect of misleading and deceiving public into believing that needed fittings and alterations could