

Complaint

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

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

Docket 1979. Complaint, Oct. 19, 1931—Order, Aug. 11, 1933

Consent order requiring respondent association, its members and other agents, representatives, servants, and employees to cease and desist "from directly or indirectly making application of any resolution, rule, by-law, understanding, or agreement, having for its purpose or effect interference with, or restriction upon the purchase, sale or importation into the State of Pennsylvania from any other State of the United States of tiles or similar materials, including a vitreous enamel tile on a steel base heretofore designated and known as 'Porstelain', manufactured and sold in interstate commerce by the Porcelain Tile Company, and particularly from giving any further force and effect to that certain resolution adopted by respondent Pittsburgh Tile & Mantel Contractors' Association on the 9th day of July A.D. 1929, making it an offense for member concerns to deal in said product formerly known as 'Porstelain', *Provided*, That this order shall not be construed as restricting the respondent Pittsburgh Tile & Mantel Contractors' Association in determining the bona fide eligibility requirements for membership therein."

Mr. PGad B. Morehouse for the Commission.

Davies, Jones, Beebe & Busick, of Washington, D.C., and *Alter, Wright & Barron*, of Pittsburgh, Pa., for respondents.

COMPLAINT

Acting in the public interest 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 charges that the respondents named in the caption hereof have been and are using unfair methods of competition in interstate commerce in violation of the provisions of Section 5 of said Act, and states its charges in that respect as follows:

PARAGRAPH 1. Respondents, Pittsburgh Tile & Mantel Contractors' Association, Certified Tile Corporation, Beachview Mantel & Tile Co., Dormont Mantel & Tile Co., Highland Mantel & Tile Co., Lincoln Mantel & Tile Co., Starr Tiling Co., and Twin City Tiling Co. are all Pennsylvania corporations having their respective places of business in Pittsburgh. Respondent Frank J. Haggerty Mantel Co. is a Pennsylvania corporation with its principal place of business at

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Homestead, Pa. Respondents David Morris, Frederick Lawrence Graf, and Fred L. Graf constitute a limited partnership formed under the laws of Pennsylvania, doing business under the style of Morris, Graf & Co., Ltd., and having their principal place of business at Wilkinsburg, Pa. Respondent Edward M. Aiken, doing business under the firm style of Aiken & Co., has his principal place of business in Pittsburgh. Respondent R. E. Logan, doing business under the style of R. E. Logan & Co., has his principal place of business in Pittsburgh. Respondents Hettie A. McNeilly, Thomas McCutcheon, James McNeilly, and Louis McNeilly are copartners doing business under the firm style of McNeilly Mantel & Tiling Co. with their principal place of business at McKeesport, Pa. Respondents Mary A. Spellman and James J. Spellman are copartners doing business under the firm style of M. J. Spellman & Co. and having their principal place of business in Pittsburgh. Respondent E. J. Hubbert does business under the firm style of Standard Mantel & Tile Co. and has his principal place of business in Pittsburgh. Respondent Pittsburgh Tile & Mantel Contractors' Association will be hereinafter referred to as the "Association". Respondents, other than the Association and Certified Tile Corporation, are members of the Association and are hereinafter referred to as "member concerns". There are other tile and mantel dealers in Allegheny County, Pa., who are, or were recently, members of the Association, but are not joined herein as respondents. They are under suspension from the Association pursuant to action taken as described in paragraph 10.

PAR. 2. The Association was formed, as a corporation not for profit, in 1904, under the name Mantel & Tile Dealers' Credit Association of Allegheny County. A change of corporate name to the present title was authorized in 1919. The Association is not engaged in the sale or purchase of any commodity. It is a trade Association. It has no capital stock. The member concerns of the Association are dealers in tile and mantel in Allegheny County, Pa. They not only sell tile and mantel and related materials, but contract with purchasers for the installation of tile and mantel. In the regular course of their business member concerns purchase the commodities in which they deal from manufacturers thereof and others located both in Pennsylvania and other States, and cause the same to be transported from the said various States to their respective places of business in the county aforesaid. Member concerns are in competition in their said described trade, both among themselves and with nonmember corporations, partnerships, and individuals engaged in the purchase, sale, and installation of mantel, tile and

similar materials. Member concerns have the major part of the tile and mantel trade in said county.

PAR. 3. The Certified Tile Corporation was formed as a corporation for profit, in 1928, with 500 shares of stock of \$100 par value each. It is engaged in buying and selling tile and mantel and related materials, purchasing the same, in the regular course of its trade, both in Pennsylvania and in other States, and causing the said materials to be transported from the various States of manufacture to the warehouses of said corporation in Pittsburgh. Sales of the materials so purchased by the Certified Tile Corporation are by it made to member concerns of the Association exclusively. The Certified Tile Corporation is in competition with other vendors of the same or similar materials in the said county who cause the materials so purchased to be transported from other States into Pennsylvania for resale to member concerns and to others competing with member concerns, as in paragraph 2 hereof alleged. The member concerns of the Association are subscribers to the stock of the Certified Tile Corporation. The said stock and certificates thereof are held by the Association in escrow as partial security for the adherence of member concerns to the policies of the Association hereinafter set forth. The Association controls the Certified Tile Corporation. The president, treasurer and secretary of the Association are respectively the president, treasurer and secretary of the Certified Tile Corporation. Suspension from the Association is deemed by the respondents to work a forfeiture of the stock in the Certified Tile Corporation, owned by any member, during the period of any member's suspension.

PAR. 4. The avowed purposes of the Association as set forth in article II of its charter are as follows:

That the purpose for which the corporation is formed is the encouragement and protection of trade and commerce among those engaged in the business of dealing in mantels and tile in the County of Allegheny, in said Commonwealth of Pennsylvania, by inculcating among them just and equitable principles; by establishing and maintaining uniformity in commercial usages; by acquiring, preserving, and disseminating valuable business information; by avoiding and adjusting, as far as practicable, the controversies and misunderstandings which are apt to arise between individuals engaged in trade when they have no acknowledged rules to guide them; and by these means, to attain to the end that membership in this corporation may be an assurance to the public of skill, honorable reputation and probity.

PAR. 5. The member concerns have mutually bound themselves to follow a uniform and concerted course of action on all matters, both such as may be deemed to be within the purview of the charter provision of the Association set forth in paragraph 4 hereof, and on any

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other rule of action which the Association may adopt, subject to penalties, by the express terms of article VI, section 3, of the Association's bylaws, in manner following:

The members of this corporation shall be bound to abide by the decision of the corporate body in all matters coming within the purview of the second article of the charter of incorporation, and of the general policy of the corporation adopted pursuant to said second article, and the violation or departure from, or willful disregard of either the general rules laid down by the corporation in furtherance of the purpose of its creation, or of any particular rule of action adopted and laid down by the corporation in any given case, shall upon conviction by the corporation, subject the party so violating, departing from or disregarding the rulings and general policy of the corporation, to the payment of a fine in such sum as the corporation may, by resolution, fix.

In case of the nonpayment of any fine imposed upon any member concern, it is provided by article VIII, section 2, of the bylaws, that the delinquent member shall be suspended from membership in the Association.

PAR. 6. All concerns joining the Association after the formation thereof, have agreed, by the express terms of article IV, section 4, of the bylaws, to abide by the policy adopted by the Association, as to the conduct of the business in which they are engaged. Applicant concerns, under article VI, section 7, of the bylaws, do not become members in good standing in the Association until they have caused signature to be duly authorized and made of the charter and bylaws of the Association. The duty of reporting violations of the Association's policies, committed by member concerns, is expressly assumed by all members under the terms of article VIII, section 1, of the bylaws.

PAR. 7. It is also agreed by the member concerns of the Association, by the express terms of article VI, section 1, of the bylaws, that no member shall resign from the Association so long as it is engaged in the mantel business, the tile business, or both.

PAR. 8. Membership in the Association confers upon member concerns great advantages not enjoyed by nonmember competitors. Among the said advantages are the following:

- (a) The exchange of trade and credit information with other members;
- (b) Credit prestige in the trade;
- (c) Prestige in the trade as to the quality of materials and workmanship;
- (d) The certification or guarantee of materials and workmanship by the Certified Tile Corporation, which are only available to member concerns;
- (e) The privilege of buying certain materials which the Certified Tile Corporation has secured the exclusive right to sell in the aforesaid county and which it sells to member concerns only;
- (f) The privilege of buying certain materials through the Certified Tile Corporation at discounts greater than those obtainable by nonmember competing mantel and tile dealers;

(g) The right to participate in the dividends of the Certified Tile Corporation;

(h) The good will and cooperation of other member concerns; and

(i) The rights and privileges in general of membership in both the Association and the Certified Tile Corporation, and of stock ownership in the latter corporation.

PAR. 9. In 1929, certain of the member concerns of the Association, not parties respondent herein, made contracts for purchasing and importing into said Allegheny County, Pa., from the State of Missouri, that certain enameled metal product known as "porstelain", which product said members were then installing and selling in competition with the materials installed and sold by other member concerns and by nonmembers engaged in said county in the business described in paragraph 2 hereof.

PAR. 10. On July 9, 1929, a resolution was adopted by the Association, wherein it was declared that dealing in said "porstelain" was an offense within the provisions of the bylaws set forth in paragraph 5 hereof, and further, it was therein declared that member concerns continuing thereafter to deal in "porstelain" would become subject to the said bylaw provisions. Thereafter, the said member concerns which had dealt in said "porstelain", as in paragraph 9 herein set forth, having failed or omitted to discontinue their trade therein, were by this Association fined in substantial sums, were suspended from membership in this Association and were excluded from the advantages of such membership set forth in paragraph 8 hereof; and they are still deprived of said membership and its said advantages.

PAR. 11. Among the purposes of the understandings and activities set forth herein in paragraphs 4 to 10, inclusive, are the following:

(a) To prevent, insofar as possible, the purchase and importation into Pennsylvania, and the sale of said "porstelain", and completely to prohibit such purchase, importation and sale by member concerns of the Association;

(b) To coerce certain member concerns to break their contracts, previously made, for the said purchase, importation and sale of said "porstelain";

(c) To diminish the confidence of the trade and of consumers in said "porstelain" and to prevent the establishment of such confidence;

(d) To damage and, insofar as possible, to destroy the trade of both the producers and the dealers in the said "porstelain" from other States into Pennsylvania and in that State;

PAR. 12. The effect of the understandings and the activities of respondents as alleged above in paragraphs 4 to 10, inclusive, has been and is as follows:

(a) To diminish and restrict the purchase, the importation from other States into Allegheny County, Pa., and the sales in said county, of said "porstelain";

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(b) To close to the producers and shippers of said "porstelain" numerous outlets for interstate trade therein;

(c) To bring to bear the coercive influences of ostracism, trade isolation and the loss of the business and monetary advantages, hereinabove in paragraph 8 set forth, upon member concerns neglecting or refusing to adhere to the policies and agreements of the Association as respects said "porstelain";

(d) To impress upon member concerns against which action, as described in paragraph 10, has not been taken by the Association, that they cannot deal in said "porstelain" without incurring serious penalties;

(e) To deprive dealers in tile and mantel of the free and unobstructed conduct and control of their respective businesses in such manner as the managers of each concern may deem fit, and to intimidate and prevent dealers from trading in said "porstelain";

(f) To deprive the buying public of Allegheny County, Pa., of the benefit of the free and unobstructed competition between said "porstelain" and other materials sold and used for the same or similar purposes;

(g) To substantially lessen, hinder, restrict and restrain interstate trade in said "porstelain", with resulting benefits to the trade of manufacturers of and dealers in competing materials;

(h) To conduce to a monopoly in Allegheny County, Pa., in favor of the materials approved by the Association.

PAR. 13. The practices and methods of competition hereinabove described have the capacity and a dangerous tendency to substantially lessen competition in interstate trade in tile and mantel and allied materials and to create a monopoly in favor of certain materials approved by the respondents, in an important market for these materials, and said practices and methods have actually lessened such competition in the said market. The said practices and methods of competition of respondents are against the public interest and constitute unfair methods of competition in commerce between the States, in violation of Section 5 of the aforesaid Act of Congress known as the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

This proceeding having come on for final hearing by the Federal Trade Commission upon the respondents' answer waiving all further procedure and consenting that the Commission may make, enter and serve upon them and each of them an order to cease and desist from the methods of competition charged in the complaint and the Commission being fully advised in the premises, and it having been stipulated and agreed by and between counsel for respondents and counsel for the Commission that the names and designations of certain of the respondents as they appear in the caption and body of the complaint hereinbefore entered and served upon all of the following respondents, may be considered by the Commission as having been amended to conform to the proper names and designations of said respondents as they hereinafter appear.

It is now ordered, That said stipulation and agreement be and the same is hereby approved, that the complaint be so amended, and that the respondents, Pittsburgh Tile & Mantel Contractors' Association, Certified Tile Corporation, Beechview Mantel & Tile Co., Dormont Mantel & Tile Co., Highland Mantel & Tile Co., Lincoln Mantel & Tile Co., Starr Tiling Co., all corporations formed under the laws of Pennsylvania; W. P. Ramsey, doing business as Twin City Tiling Co.; David Morris, Frederick Lawrence Graf, and Fred L. Graf, doing business as a Pennsylvania limited partnership association under the style of Morris, Graf & Co., Ltd.; Edward M. Aiken, doing business under the style of Aiken & Co.; R. E. Logan, doing business under the style of R. E. Logan & Co.; James Louis McNeilly, Hattie A. McNeilly, and Thomas McCutcheon, copartners, doing business under the style of McNeilly Mantel & Tile Co.; Mary A. Spellman and James J. Spellman, copartners doing business under the style of M. J. Spellman & Co.; and E. J. Huber doing business under the style of Standard Mantel & Tile Co., and the agents, representatives, servants, and employees of each of them cease and desist from directly or indirectly making application of any resolution, rule, bylaw, understanding or agreement, having for its purpose or effect interference with, or restriction upon the purchase, sale, or importation into the State of Pennsylvania from any other State of the United States of tiles or similar materials, including a vitreous enamel tile on a steel base heretofore designated and known as "Porstelain" manufactured and sold in interstate commerce by the Porcelain Tile Co., and particularly from giving any further force and effect to that certain resolution adopted by respondent Pittsburgh Tile and Mantel Contractors' Association on the 9th day of July A.D. 1929, making it an offense for member concerns to deal in said product formerly known as "Porstelain", *Provided*, That this order shall not be construed as restricting the respondent Pittsburgh Tile & Mantel Contractors' Association in determining the bona fide eligibility requirements for membership therein.

It is further ordered, That the respondents and each of them shall within 60 days after 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 hereinabove set forth.

IN THE MATTER OF
MAISEL TRADING POST, 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 2037. Complaint, May 17, 1932—Decision, Aug. 21, 1933

Where the terms "Indian" or "Indian made", generally coupled with the word "jewelry", or with the word or words "bracelet", "ring", "concha belt", or other words descriptive of various articles of jewelry, had long come to be known by the public as defining silver jewelry products made by Indians of the Southwest, by hand processes exclusively, and to be purchased by the public as such, and jewelry sold to the public under said terms had acquired a reputation for beauty, artistic character, individuality, and wearing qualities, and enjoyed a wide, popular demand and distribution, and the Indians and Indian traders concerned had a valuable goodwill in said terms as applied to products hand-hammered and fashioned exclusively by hand tools and processes (enhanced by the widespread sentiment in favor of the Indians, and the products of their arts and handicrafts); and thereafter a corporation engaged in the production of silver jewelry by machinery, with Indian employees, white foreman, officers and sales forces, and in the sale of said jewelry in competition both with Indian traders and others selling jewelry made by Indian silversmiths, and with those engaged in the sale of machine made silver jewelry, in styles similar to those used by the Indians, under such designations as "Indian design" jewelry,

Designated its said products as "Indian" or "Indian made" and sold the same to dealer customers throughout the country as "Indian jewelry" and "Indian made jewelry", and so labeled, and described the same in catalogs and advertising literature furnished to its said customers, with the effect that some were misled and deceived into buying said much more cheaply made products as and for those made exclusively by hand as aforesaid, there was put into the hands of others, not misled, the means whereby the public might be induced to buy its said machine-made products as and for the much more costly and artistic products made by hand, and hand tool processes, exclusively, by Indians, its own customers were aided in substantial numbers in selling its said products to numbers asking for jewelry under said terms without realizing that they were made in large part, or in any part, by machinery, and the public was thereby caused to purchase its said less costly and lower priced jewelry as and for that hand-hammered, fashioned, and ornamented by Indians by the use of hand tools and processes, exclusively, and was induced in a large proportion of cases to purchase said articles which it otherwise would not have purchased; and

With the result that it was thereby enabled to undersell competitors selling true Indian hand-made jewelry, retailers were induced to stock and sell its said machine-made products by reason of the great advantage thus