

Complaint

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IN THE MATTER OF
THE MASONITE CORPORATION

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 28, 1914

Docket 2614. Complaint, Nov. 6, 1935—Decision, Nov. 6, 1937

Where a corporation engaged in manufacture of wall board and wall coverings compounded from wood chips and fibers and other substances under a process resulting in a hard durable sheeting or covering upon which were scored or stamped squares resembling, when painted or lacquered by others with different color from remainder of the sheet, mortar lines upon completely installed ceramic surface, and in the sale and distribution, in other States and in the District of Columbia, of such products, in competition, among others, with many engaged in manufacture, sale and transportation, as aforesaid, of tile made from clay and baked in kilns and properly described and designated as such, and with others who make, sell, and distribute wall board and wall coverings and various other products, including copper tile, glass tile, wood tile, rubber tile, cork tile, and the like, properly thus designated and described—

Made use of designation "Temprtile" as designation of its said products in extensively advertising the same, notwithstanding fact its aforesaid board and coverings were not that baked clay or ceramic product connoted by word "tile" standing alone and without qualifying prefix as hereinbefore set forth; with tendency and capacity to mislead and deceive substantial portion of purchasing public, to its damage and injury, into the belief that aforesaid products, thus designated, were made from baked clay, and with tendency to and effect of diverting trade from tile or baked clay products of competitor-manufacturers who make and sell, as aforesaid, tile products:

Held, That such acts and practices were to the prejudice of the public and competitors and constituted unfair methods of competition.

Before *Mr. Charles F. Diggs*, *Mr. John J. Keenan* and *Mr. John L. Hornor*, trial examiners.

Mr. Alden S. Bradley and *Mr. Morton Nesmith* for the Commission.
Dyke & Schaines, of New York City, for respondent.

Hines, Rearick, Dorr & Hammond, of New York City, for Tile Manufacturers' Assn., Inc., amicus curiae.

COMPLAINT

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, having reason to believe that The Masonite Corporation, hereinafter referred to as respondent, has been and is using unfair methods of competition in commerce as "commerce"

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is defined in said act of Congress, and it appearing to said 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:

PARAGRAPHS 1. Said respondent The Masonite Corporation is a corporation organized and existing under and by virtue of the laws of the State of Delaware with its principal office and place of business located in Chicago in the State of Illinois. Respondent has been, during its entire corporate existence, engaged in the manufacture, sale, and distribution in interstate commerce of insulating board and wall board manufactured out of wood refuse.

Respondent, in the course and conduct of its business as aforesaid, has manufactured, sold, distributed, and transported, or caused to be transported, from its factory in Laurel, Miss., and from other warehouses used by the respondent in the State of Mississippi and in the State of Illinois for the purpose of storing its said products, insulating board and wall board, and has caused such products to be transported from the place where the same is manufactured or stored in the States aforesaid into States other than the State of origin of such shipments, and has maintained a constant current of trade and commerce between and among the various States of the United States.

PAR. 2. Respondent is the sole owner and patent holder of the process of the manufacture of the various commodities above described as being manufactured and vended by it, and in the course and conduct of its business has manufactured and sold under the trade name of "Temptrtile" a commodity manufactured solely of wood or wood refuse, and has displayed and featured the name so adopted and attached to such commodity in advertisements and advertising matter issued and circulated by it, and has caused, either separately or in immediate conjunction with such trade name the following statements to appear:

Aristocrat in Beautiful Low Cost Tile.

There are two methods of installing Temptrtile. One is to cement the tile over plaster * * *.

This new, modern all wood Temptrtile is made of all new Presdwood * * *.

It is furnished in $\frac{1}{8}$ inch and $\frac{3}{8}$ inch thicknesses; 4 feet by 12 feet panels, with indentations compressed in the surface. When properly finished it produces the effect of 4 inch by 4 inch tile and in several ways it is superior to regular tile.

PAR. 3. The use of the trade name "Temptrtile," and the use of the advertisements and advertising matter as quoted above, have the capacity and tendency to, and do, in fact, mislead and deceive a substantial portion of the purchasing public into the belief that

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the product so described is "tile" as that word is understood in the building trade and by the general public.

The word "tile" as understood in the building trade and by the general public designates a product consisting of clay or earth; such product being manufactured by a process of baking in a kiln or oven.

PAR. 4. In the course and conduct of the business of the respondent as above related, it manufactures for sale to and resale by non-manufacturing individuals, firms, copartnerships and corporations engaged in competition with respondent in the merchandising of similar products, a commodity identical, or virtually identical, in its composition and processing with the commodity last above described, and distributes such commodity in interstate commerce among such competitors, prohibiting, however, the use by them of the trade name "Temptrtile," but permitting, encouraging, and directing the selection of various other names which it approves and which names are trade names under which the identical or virtually identical, product is marketed by such competitors to the public. Some of the names so selected and approved by the respondent are as follows:

Celotex Hard Tile

Hamasote Tempered Tile

Armstrong Temwood Tile

Tuffwood Tile

Canic Dense Tile

Gold Bond Hard Board Tile

Beaver Dense Tile

and other similar names, all of which contain as part thereof, the word "tile."

In addition to the practice last above set forth, the said respondent prepared and furnished and does now prepare and furnish to such competitors, advertisements and advertising matter which they used and now use in soliciting the sale of and selling said products in interstate commerce, and which advertisements and advertising matter contained and do contain expressions and representations similar to those set forth in paragraph 1 of this complaint.

In truth and in fact, none of the products so sold to competitors, as above related, are clay products, nor are they baked in a kiln, and they are not and have not been "tile" as that word is understood in the building trade and by the general public.

PAR. 5. There are, among the competitors of respondent, a substantial number of persons, partnerships, and corporations engaged in the manufacture of insulating boards and wall boards out of wood or pulp refuse, who do not falsely represent the product so manufactured by them to be "tile."

There are, among the competitors of respondent, a substantial number of persons, partnerships, and corporations engaged in the manufacture of "tile," which said "tile" is made by a process and of basic materials in consonance with the conception of "tile" as understood in the building trade and by the general public. The acts and practices of the respondent as above set forth have had and have the capacity and tendency to divert trade unfairly to respondent from the aforesaid competitors.

PAR. 6. The acts and practices done by the respondent are all to the injury and prejudice of the public and of competitors of the respondent in interstate commerce, and constitute unfair methods of competition in interstate commerce within the intent and meaning of Section 5 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."

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 on November 6, 1935, issued, and on November 8, 1935, served its complaint in this proceeding upon respondent, The Masonite Corporation, a corporation, charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said complaint, and the filing of respondent's answer thereto, testimony and other evidence in support of the allegations of said complaint were introduced by Alden S. Bradley and Morton Nesmith, attorneys for the Commission, before John J. Keenan, an examiner of the Commission theretofore duly designated by it, and in opposition to the allegations of the complaint by Dyke and Schaines, attorneys for the respondent; and said 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 on the said complaint, the answer thereto and testimony and other evidence; and the Commission having duly considered the same, 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, The Masonite Corporation, is a corporation organized and existing under and by virtue of the laws of

the State of Delaware, with its office and principal place of business located at Chicago in the State of Illinois. Respondent has been, during its corporate existence, engaged, among other things, in the business of manufacturing, selling, and distributing wall board and wall coverings, which products are manufactured from wood fibre, and which respondent designates as "Temprtle." Respondent owns and operates a factory wherein its products are manufactured in the city of Laurel, State of Mississippi.

Respondent, in the course and conduct of its business, has sold, distributed, and transported or caused to be transported, its aforesaid product from its factory in the State of Mississippi to purchasers thereof located in various points of the States of the United States other than the State of Mississippi, and has maintained a constant current of trade and commerce between and among the various States of the United States and in the District of Columbia.

There are among competitors of respondent many persons, firms, and corporations located and doing business in the United States, engaged in the manufacture, sale, and transportation of tile in commerce between and among the various States of the United States, which tile is manufactured from clay and baked in kilns, whose products are properly described and designated as tile. There are others who manufacture, sell and distribute wall board and wall coverings, and various other products, such as copper tile, glass tile, wood tile, rubber tile, cork tile, and the like, whose products are properly designated and described by such names.

PAR. 2. The term "tile," when used alone and not in conjunction with other words is generally understood in the building trade and by the general public to be a hard clay product which has been baked in kilns and in its final form shaped into comparatively small-sized units. Tile, as so understood, is compounded from clays and a mixture of clays, feldspar, flint, talc, ball clays,rophyllite, aluminum hydroxid, silica, and some chemicals for coloring purposes. These materials are mixed in various proportions to produce various qualities in the tile. They are mixed in large mixing vats containing agitators, until the mixture of the ceramic materials with the admixture of water approaches the consistency of a thick soup. Then it is put in a filter press, the water being reduced to a certain percentage of the total content of the materials, and the materials coming from the filter presses are dried until they have a moisture content ranging from ten to fifteen percent. The materials are then pulverized into a dust form, which is pressed into tiles of various shapes. The tiles are then dried down to approximately zero per cent moisture content and fired in a kiln at a temperature exceeding red heat, which may

run from 1,200° Fahrenheit upward. The purpose of this firing is to harden the ceramic material until it is an impervious, dense, durable mass. There are glazed and unglazed types of tiles. The unglazed tile has a rough, unfinished surface, while the glazed tile has a shiny glass or decorative surface, the glaze being matured after the first firing operation by the addition of certain mineral oxides; after which it is put through a process known as "gloss firing." Floor and wall tiles are produced in relatively small individual units, the extreme permissible size of the units being about six by twelve inches, the reason being that the manufacturers of ceramic products are confronted with the fact that clays and mixtures of clays with other materials, when formed into wares, undergo shrinkage during the drying and firing processes. Therefore, one of the problems of the tile manufacturer is to produce ware free from warping or cracking, and the larger the unit the greater the liability of warping and cracking resulting from shrinkage of the mixture.

Floor and wall tile of baked clay is installed upon a proper base and set in cement by workmen known as "tile setters." The term "tile" when used alone and without descriptive words, means ceramic tile, which is a more complete name for the product just described.

The use of the word "tile," standing alone and without descriptive words, dates back some four thousand years to the Egyptians, who, according to man's knowledge, were the first to discover the art of molding and baking clay into hard units, as above described.

There are manufacturers, however, of other products designed to be used as floor and wall coverings, whose said products are properly designated and described as rubber tile, glass tile, copper tile, acoustical tile, cork tile, wood tile, composition tile, metal tile, cement tile, linoleum tile, asphaltum tile, stone tile, and the like. These products are generally understood in the building trade and by a substantial portion of the general public as being coverings made from the substances so indicated by word or words preceding the word "tile."

The respondent's product, known as "Temprtile," is compounded from wood chips and wood fibres and other substances and siccative materials, which are unique, and are baked in an oven at a high temperature, pressed and tempered, so that the final product is a hard, durable sheeting or covering. These sheets can be cut in practically any size desired, but the general size ordinarily sold by respondent is three by four feet. The surface of this sheeting or covering known as "Temprtile" is scored or stamped so that lines forming squares are impressed upon the sheeting and when painted or lacquered by others with a different color from the remainder of

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the sheeting appear similar to mortar lines upon a completely installed ceramic surface.

PAR. 3. Many experts, including prominent architects, tile manufacturers, tile contractors, tile jobbers, professors of ceramic, structural engineers, architectural and structural standardists and contractors, testified, and the Commission finds it to be a fact, that the word "tile" when standing alone means or connotes a baked clay or ceramic product; further, that the term "tile" standing alone does not have to be accompanied by the word "ceramic" to denote a ceramic tile. By the use of the word "tile" alone a ceramic tile is meant. There are different types of tiles, or ceramic tiling, such as roofing tiles, hollow tiles, drain tiles, and decorative wall tiles. The term "tile," if used in conjunction with some other word or words, descriptive of the material or substance of which the product is composed, means or connotes not a baked clay or ceramic product, but a product manufactured from the other material or substance employed. Examples of this are rubber tile, asbestos tile, cork tile, wood tile, tin tile, glass tile, and cement tile. These various products have been so known to the building trade and to a portion of the general public for a number of years. Several experts and others, including prominent architects, manufacturers, building contractors, jobbers, and members of the general purchasing public, testified that the word "tile" when standing alone meant nothing to them, and they had to be informed of the substance of which the tile was made.

The Government of the United States, through the Procurement Department of the Treasury, in asking for bids on public buildings, includes in its specifications references to various products under the designations of cork tile, rubber tile, linoleum tile, acoustical tile, and others.

PAR. 4. Respondent, in the course and conduct of its business as aforesaid, in extensive advertising of its products, uses the name "Temprtle." The aforesaid designation, when used alone by respondent as descriptive of or as a designation for its products, has the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the belief that the products so described are manufactured from baked clay, all of which is to the damage and injury of said purchasing public, and tends to and does divert trade from competitors of respondent, who manufacture and sell tile products manufactured from baked clay.

PAR. 5. The designation and description by respondent of its products as "Temprtle" as heretofore described, is deceptive and misleading and has the capacity and tendency to deceive purchasers of

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said product into the belief that said products are manufactured from baked clay.

CONCLUSION

The aforesaid acts and practices of the respondent, The Masonite Corporation, are to the prejudice of the public and of respondent's competitors, and constitute unfair methods of competition in commerce, within the intent and meaning of Section 5 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 respondent, testimony and other evidence taken before John J. Keenan, an examiner of the Commission theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto, no briefs being filed and oral argument not having been requested 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 ordered, That the respondent The Masonite Corporation, a corporation its officers, representatives, agents, and employees, in connection with the offering for sale, sale and distribution of its wall board and wall covering in interstate commerce or in the District of Columbia, do forthwith cease and desist from representing:

1. Directly or indirectly, by the use of the words, "Temprtle" or "tile" that its products are "tile" unless in immediate conjunction with the words "Temprtle" or "tile" wherever used, in the same conspicuous type, there appear a word or words designating the material or substance of which the products are made, such as wood tile, glass tile, rubber tile, asbestos tile, copper tile, cork tile, or metal tile.

It is further ordered, That the respondent shall, within 90 days after service upon it of this order, file with the Commission a report in writing setting forth in detail, the manner and form in which it has complied with this order.

IN THE MATTER OF
STANDARD WALL COVERING COMPANY, INC.

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

Docket 2773. Complaint, Apr. 17, 1936—Decision, Nov. 6, 1937

Where a corporation dealing, among other things, in interior fiber wall covering, compounded from wood chips and fibers and other substances, under process resulting in a hard durable sheeting or covering upon which were scored or stamped squares resembling, when painted or lacquered by it with different color from remainder of the sheet, mortar lines on a completely installed ceramic surface, and in selling and distributing, in other States and in the District of Columbia, such products, in competition among others, with many engaged in sale and transportation, as aforesaid, of tile made from clay and baked in kilns and properly thus described and designated, with others who sell and distribute interior wall coverings and various other products, including copper tile, glass tile, wood tile, rubber tile, cork tile, and the like, properly thus designated and described, and with those who sell and distribute wall coverings made from quarried marble and who, as "marble," properly describe their products—

- (a) Made use of names "Stancotile," "Mono-tile," and "Wall Tile" as designations of its said products in extensively advertising same, notwithstanding fact its said products, thus designated, were not that baked clay or ceramic product connoted, to building trade and general public, by word "tile" standing alone and without qualifying prefix as hereinbefore set forth; with tendency and capacity to mislead and deceive substantial portion of purchasing public, to its damage and injury, into the belief that aforesaid products, thus described, were made from baked clay, and with tendency to and effect of diverting trade from competitors who sell and distribute, thus made, tile products; and
- (b) Made use of name "Mono-Marble" as designation of product made and sold by it as aforesaid; with capacity and tendency to and effect of misleading and deceiving substantial portion of purchasing public into belief that product thus described was marble; to the damage and injury of said public, and with tendency to and effect of diverting trade from competitors who quarry and finish such substance:

Held, That such acts and practices were to the prejudice of the public and competitors and constituted unfair methods of competition.

Before *Mr. Charles F. Diggs*, *Mr. John J. Keenan* and *Mr. John L. Hornor*, trial examiners.

Mr. Alden S. Bradley and *Mr. Morton Nesmith* for the Commission.

Dyke & Schaines, of New York City, for respondent.

Hines, Rearick, Dorr & Hammond, of New York City, for Tile Manufacturers' Ass'n, Inc., amicus curiae.