

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.

Complaint

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 Standard Wall Covering Company, Inc., hereinafter referred to as "respondent," has been, and is now, using unfair methods of competition in commerce as "commerce" is defined in said act, and it appearing to the 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:

PARAGRAPH 1. Respondent, Standard Wall Covering Company, Inc., is a Delaware corporation, which has its principal office and place of business at 1819 North 9th Street, in the City of Philadelphia, State of Pennsylvania. Respondent is now, and has been for some time, engaged in the business of manufacturing, distributing, and selling, in commerce, as herein set out, a line of interior fiber wall coverings designated variously as "Tile," "Stanco-tile," "Mono-Tile," "Wall Tile," and "Mono-Marble."

PAR. 2. Said respondent, being engaged in business as aforesaid, causes said fiber wall coverings, when sold, to be transported from its place of business in the State of Pennsylvania to purchasers thereof located in various points of the States of the United States other than the State from which said shipments are made. Respondent now maintains a constant current of trade in commerce in said fiber wall coverings, manufactured, distributed, and sold by it between and among the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of said business, respondent is now, and has been, in substantial competition with other individuals and with firms and corporations engaged in the business of manufacturing, distributing and selling wall coverings, particularly ceramic or burned clay tile, and marble, for use as wall coverings, in commerce, among and between the various States of the United States and in the District of Columbia. In the course and operation of said business and for the purpose of inducing the purchase of its said line of wall coverings, respondent has issued and circulated throughout the various States, and to customers and prospective customers, advertising folders, and literature. Some of respondent's said advertising and literature, so transmitted and circulated by respondent, is intended to convey the impression that respondent's products are clay tile and marble, respectively, by omitting there-

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from any reference to indicate that its product, which resembles tile, is other than burned clay tile, or to indicate that its product which resembles marble is other than marble.

The general public preference is for genuine tile and marble, over any substitutes or simulations. Historically "tile" is a ceramic or kiln or oven-baked product of comparatively small sizes to make them available both for places and designs. It is so understood in the building trade and by the general public. Respondent's products are neither tile nor marble.

On its letters, bill heads and price lists, respondent states:

Originators of one-piece tile in 1908

Originators of one-piece marble in 1932

On its bill heads appear also the following:

Mono-Tile—Tile in Sheets Not a Metal or Cement

Mono-Marble

On its circulars appears the following:

Stanco One-Piece Tile Non-Metallic A Modern Wall Tile at a Reasonable Cost

On its retail price lists and some of its circulars appears the following:

MONO-TILE: SIZES AND COLORS

Number	Field	Mortar Line
110.....	White.....	Warm Gray.
120.....	White.....	Chinese Red.
130.....	White.....	Black.
210.....	Ivory.....	Warm Gray.
310.....	Nile Green.....	Light Ivory.
320.....	Ocean Green.....	Olive Green.
410.....	Blue.....	Light Ivory.
510.....	Black.....	Light Ivory.
610.....	Apricot.....	Light Ivory.

In some of its advertisements appear the following:

Mono-Tile Mono-Marble * * * for bath, kitchen Any Interior * * *
We are manufacturers and contractors of these one-piece wall coverings which simulate ordinary tile and are photographic reproductions of quarry marble

On some of its circulars appear illustrations in color of Mono-Marble which closely resembles photographs of genuine mottled marble, and are designated as follows:

"Verde," "Breche Rose," "Light Skyros," "Black and Gold."

PAR. 4. There are among respondent's competitors many who manufacture, distribute and sell, for use as interior wall coverings, silica, burned clay tile, and also marble.

Burned clay tile is ordinarily made and sold in slabs or pieces of comparatively small size, and set in place with cement. Marble, in somewhat larger slabs, is also set in place with mortar or cement. To further simulate tile and marble, respondent has made its tile products with a glazed surface with scores and lines of various colors in such manner and at such intervals as to make its said wood fiber products more closely resemble tile slabs with various colored cement between them. Its fiber Mono-Marble slabs are made with a polished marble-like surface, with color schemes which make them resemble genuine marble as closely as an ordinary photographic reproduction.

PAR. 5. Such products so produced, advertised, sold, and shipped by respondent, have the capacity and tend to put the means and power into the hands of unscrupulous builders, architects, and speculative builders and dealers to confuse, impose upon and deceive those who buy houses and those for whom houses are built, into the belief that when they are buying respondent's wood fiber tile products and installations, they are buying and receiving silica or burned clay tile products and installations, to the injury of said buying and owning public, and also to the injury of those who manufacture and sell, in interstate commerce, genuine silica and clay surface tile for similar purposes, in competition with respondent.

Likewise, in the production, advertising, and distribution of its product, Mono-Marble, a product glazed and colored to imitate and resemble genuine marble, respondent puts the means and power into the hands of unscrupulous builders, architects, speculative builders and dealers, to confuse, impose upon and deceive those who buy houses and those for whom houses are built, into the belief that when they are buying respondent's Mono-Marble, they are buying and receiving genuine marble or receiving genuine marble installation, to their injury, and also to the injury of those who produce and sell, in interstate commerce, genuine marble for similar purposes, in competition with respondent.

The effect of such actions, representations, and dealings of respondent is also to divert to respondent some trade of those who desired and intended to purchase or own genuine tile and marble products and installations, from competitors who make such genuine products; and the effect is also to divert to respondent certain trade from those competitors who make and sell similar products but who represent their products truthfully, all to the injury of said competitors.

PAR. 6. The above and foregoing acts, practices, and representations of the respondent have been, and are, all to the prejudice of the public and respondent's competitors as aforesaid, and have been, and are, unfair methods of competition within the meaning and intent 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 April 17, 1936, issued, and on April 20, 1936, served its complaint in this proceeding upon respondent, Standard Wall Covering Company, Inc., 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 C. F. Diggs, an examiner of the Commission theretofore duly designated by it, and the witnesses for the Commission were cross-examined 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 respondent, through its attorneys, filed a motion to withdraw the original answer filed on June 1, 1936, and in lieu thereof to substitute its answer annexed to said motion, in which answer respondent admitted all the material allegations of the complaint to be true, and stated that it waived hearings on the charges set forth in the said complaint and consented that, without further evidence or other intervening procedure, the Commission might issue and serve upon it findings as to the facts and conclusions and an order to cease and desist from the violations of law charged in the complaint. Thereafter the Commission granted the respondent's motion to withdraw its original answer, and received and filed respondent's substitute answer. Thereafter the proceeding regularly came on for final hearing before the Commission on said complaint, substitute answer and the record; and the Commission having duly considered the same and being 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, Standard Wall Covering Company, Inc., is a corporation organized and existing under and by virtue of the laws of the State of Delaware, with its principal place of business and office located at 1819 North Ninth Street in the city of Philadelphia, State of Pennsylvania. Respondent has been, during its entire corporate existence, engaged, among other things, in the business of selling and distributing interior fibre wall coverings designated variously as "tile," "Stancotile," "Mono-tile," "Wall Tile," and "Mono-Marble."

Respondent, in the course and conduct of its business, has sold, distributed and transported or caused to be transported, its aforesaid products from its place of business in the State of Pennsylvania to purchasers thereof located in various points of the States of the United States other than the State of Pennsylvania, 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 sale and transportation of tile in commerce between and among the different 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 sell and distribute interior 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. There are also competitors of respondent who sell and distribute wall coverings manufactured from quarried marble, who properly describe their products as marble.

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, prophyllite, aluminum hydroxid, silica, and some chemicals for coloring purposes. The 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 percent-

age of the total content of the materials, and the materials coming from the filter press 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 percent moisture content and fired in a kiln at a temperature exceeding red heat, which may run from twelve hundred degrees 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 sellers and distributors, however, of other products designed to be used as interior wall coverings, whose said products are properly designated and described as rubber tile, glass tile, copper tile, acoustical tile, cork tile, composition tile, metal tile, cement tile, linoleum tile, wood 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 products, known as "Stancotile," "mono-tile," and "Wall Tile" are 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 surfaces of these sheetings or coverings known as "Stancotile," "Mono-tile" and "Wall Tile," are scored or stamped by the manufacturer from whom respondent purchases, so that lines forming squares are impressed upon the sheets or coverings, and when painted or lacquered by respondent a different color from the remainder of the sheeting appear similar to mortar lines on a completely installed ceramic surface. The respondent, after finishing these products, brands and labels them "Stancotile," "Mono-Tile," or "Wall Tile."

"Marble," as generally understood in the building trade and by the purchasing public, is a natural, one-piece, solid formation which is quarried out of the earth and cut and finished from the solid mass formation, and is capable of taking a polish.

PAR. 3. Many experts, including prominent architects, tile manufacturers, tile contractors, tile jobbers, professors of ceramics, 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.

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PAR. 4. Respondent, in the course and conduct of its business as aforesaid, in extensive advertising of its products, uses the names "tile," "Stancotile," "Mono-tile," and "Wall Tile." The aforesaid designations, when used alone by respondent as descriptive of or as a designation for its products, have 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 sell and distribute tile products manufactured from baked clay.

The use by the respondent of the words "Mono-Marble" has a tendency and capacity to and does in fact mislead and deceive a substantial portion of the purchasing public into the belief that the product so described is marble, to the damage and injury of the purchasing public, and tends to and does divert trade from competitors of respondent who quarry and finish marble.

PAR. 5. The designation and description by respondent of its products as "tile," "Stancotile," "Mono-tile," and "Wall Tile," as heretofore described, is deceptive and misleading, and has the capacity and tendency to deceive purchasers of said products into the belief that said products are manufactured from baked clay.

The designation and description by respondent of its product as "Mono-Marble," as heretofore described, is deceptive and misleading, and has the capacity and tendency to deceive purchasers of said product into the belief that said product is marble, as before described.

CONCLUSION

The aforesaid acts and practices of the respondent Standard Wall Covering Company, Inc., 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

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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 Standard Wall Covering Company, a corporation, its officers, representatives, agents, and employees, in connection with the offering for sale, sale and distribution of its interior wall coverings 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 "tile," "Stanco-tile" and "Mono-tile," that its products are "tile," unless in immediate conjunction with the words "tile" "Stancotile" or "Mono-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; and

2. Directly or indirectly, by the use of the words "Mono-Marble" that its products are marble when such is not the fact.

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
**THE MARSH LUMBER COMPANY, TRADING AS MARSH
WALL TILE COMPANY**

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 20, 1914

Docket 2827. Complaint, May 29, 1936—Decision, Nov. 6, 1937

Where a corporation dealing, among other things, in wall coverings and counter coverings compounded from wood chips and fibers and other substances under process resulting in hard durable sheeting or covering upon which were scored or stamped, by manufacturer, squares resembling, when painted or lacquered by it with different color from remainder of the sheeting, mortar lines on a completely installed ceramic surface, and in selling and distributing, in other States and in 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 wall coverings and counter coverings and various other products, including copper tile, glass tile, wood tile, rubber tile, cork tile, and the like, properly thus designated and described by such names, and with those who sell and distribute such coverings made from quarried marble and who, as marble, properly describe their said products—

- (a) Made use of names "Marstile" and "Marsh 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 "Marsh Marble" as designation of product made and sold by it as aforesaid; with tendency and capacity to mislead and deceive 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, and *Wilkins, Fisher & Limbach*, of New Philadelphia, Ohio, for respondent.