

IN THE MATTER OF

R. T. VANDERBILT COMPANY, INC., AND STANDARD
MINERAL COMPANY, INC.

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914, AND OF SEC. 3
OF AN ACT OF CONGRESS APPROVED OCT. 15, 1914, AS AMENDED

Docket 3656. Complaint, Nov. 30, 1938—Decision, Dec. 16, 1941

Where a corporation, which was the sole sales agent and owner of the majority of the issued preferred voting stock of second corporate concern, engaged in mining or quarrying pyrophyllite, important raw material used extensively in the ceramic field, operating one of three deposits in North Carolina which, excepting those in California from which no sales were shown to have been made, were the only deposits in the United States developed in commercial quantities—

Acting in concert to restrict and restrain competition in pyrophyllite and to secure a monopoly in sale thereof for use in the manufacture of semivitreous earthenware; following acquisition by former company of certain patents covering semivitreous earthenware bodies composed of pyrophyllite and other ingredients, but which did not give exclusive right to use said product in manufacture of such ware or to mine or sell it—

- (a) Falsely represented, directly or by implication, through letters sent to competitors and manufacturers of ceramic products, that, by reason of its ownership of said patents, it had the sole right to sell pyrophyllite for use in the manufacture of semivitreous earthenware, and that no one had the right to use said substance in such manufacture without its license or consent; and
- (b) Warned customers and prospective customers of their competitors that the use by them in the manufacture of such earthenware of pyrophyllite purchased from said competitors constituted an infringement of the said patents, and threatened them with infringement suits in the event of such use;
- Not in good faith in order to protect their own rights in connection with the manufacture of products in question, or to obtain a financial return, by licensing the use of such patents, but with intent of diverting trade in said substance to them from their competitors and creating a monopoly in themselves in the sale thereof; and
- (c) Refused to grant licenses under patents involved except to purchasers of said substance from them, and undertook to restrict such licenses to manufacture of earthenware bodies containing pyrophyllite acquired from them; and
- (d) Made sales of said substance to companies producing semivitreous earthenware, with accompanying licenses to use said patents, upon the condition and understanding that the buyers would not use or purchase pyrophyllite from their competitors, and for the purpose of monopolizing commerce therein;

With effect of suppressing, preventing and destroying competition between them and their competitors in the sale and distribution of such product in commerce:

Held, That such acts and practices, under the circumstances set forth, were to the prejudice of the public and their competitors, and constituted unfair methods of competition in commerce and unfair acts and practices, in violation of the Federal Trade Commission Act; and tended to, and did, substantially lessen competition and create a monopoly therein in them, in violation of the provisions of Section 3 of the Clayton Act, as amended.

Before *Mr. Arthur F. Thomas*, trial examiner.

Mr. J. R. Phillips, Jr. for the Commission.

Mr. Frank E. Barrows of Pennie, Davis, Marvin & Edmonds, of New York City, for respondents.

COMPLAINT

Count 1

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission having reason to believe that R. T. Vanderbilt Co., Inc., a corporation, and Standard Mineral Co., Inc., a corporation, hereinafter referred to as respondents, have violated the provisions of 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 Mineral Co., Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of North Carolina, with its principal office and place of business at 230 Park Avenue, New York City, State of New York. It is now and for many years last past has been engaged in the business of mining or quarrying at Hemp, Moore County, in the State of North Carolina, a crude mineral known as pyrophyllite, being a hydrous silicate of aluminum which is used extensively in the ceramic field, particularly in the production of semivitreous earthenware products.

Respondent, R. T. Vanderbilt Co., Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business located at 230 Park Avenue, New York City, State of New York. It is now and for many years last past has been engaged in the production, sale, and distribution of various minerals and chemicals, including said mineral known as pyrophyllite.

Respondent, R. T. Vanderbilt Co., Inc., is the sole distributor of said pyrophyllite which is mined and quarried by the respondent,

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Standard Mineral Co., Inc. In addition thereto, the respondent, R. T. Vanderbilt Co., Inc., is the owner of certain patents on a process for the admixture of pyrophyllite in connection with the manufacture and production of semivitreous earthenware bodies.

Respondent, R. T. Vanderbilt Co., Inc., owns the majority of the capital stock of respondent, Standard Mineral Co., Inc., and dominates its business policies and activities. Said respondents act in cooperation and in combination with each other in carrying out the acts and practices hereinafter charged, and are the largest of the three or four concerns engaged in the mining or quarrying and sale and distribution of pyrophyllite in the United States.

PAR. 2. The respondents, acting in cooperation as aforesaid, cause said pyrophyllite, when sold by them, to be shipped from the mines or quarries of the Standard Mineral Co., Inc., in the State of North Carolina to the respective purchasers thereof located in other States of the United States and in the District of Columbia.

Respondents maintain and at all times mentioned herein have maintained a course of trade in said pyrophyllite sold and distributed by them in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of their business respondents are in active and substantial competition with other corporations, and with individuals, firms and partnerships engaged in the sale and distribution of pyrophyllite in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 4. In the course and conduct of its aforesaid business, the respondent, R. T. Vanderbilt Co., Inc., with the active cooperation, knowledge and consent of the respondent, Standard Mineral Co., Inc., offers to license and does license the use of said patented process for the admixture of pyrophyllite in connection with the manufacture and production of semivitreous earthenware products, on the condition, agreement and understanding that such licensees shall purchase and use in connection therewith only that pyrophyllite which is mined or quarried by the respondent, Standard Mineral Co., Inc., and sold and supplied by the respondent, R. T. Vanderbilt Co., Inc. Licensees and purchasers of pyrophyllite from respondent, R. T. Vanderbilt Co., Inc., are required to agree that they will not purchase or use pyrophyllite acquired from any competitor of respondent, R. T. Vanderbilt Co., Inc.

PAR. 5. Respondent, R. T. Vanderbilt Co., Inc., in concert and cooperation with respondent, Standard Mineral Co., Inc., for the purpose and with the result of inducing the purchase of said pyrophyllite, has pursued and continues to pursue a course of action which has the

tendency and effect of stifling, suppressing, eliminating, preventing and destroying actual and potential competition between the said respondents on the one hand and all competitors of respondent, R. T. Vanderbilt Co., Inc., on the other hand, consisting of the use of the following acts, practices and methods:

1. Falsely representing that through its ownership of the aforesaid patented process, respondent, R. T. Vanderbilt Co., Inc., has the sole and exclusive right to sell and supply pyrophyllite for use in connection with the manufacture and production of semivitreous earthenware products, and that no one has or had the right to use said pyrophyllite in such connection or use without its license or consent.

2. Issuing and causing to be issued to the customers and prospective customers of respondents' competitors letters and communications threatening patent infringement suits against users of pyrophyllite purchased from respondents' competitors in manufacturing and producing semivitreous earthenware products as being an infringement of the patented process owned by said respondent, R. T. Vanderbilt Co., Inc.

3. Warning purchasers and prospective purchasers of pyrophyllite supplied by competitors of respondents of liability for infringement of the aforesaid patented process, through the use of pyrophyllite purchased from sources other than respondents', for use in accordance with the aforesaid patented process in the manufacture of semivitreous earthenware products.

PAR. 6. In truth and in fact respondent, R. T. Vanderbilt Co., Inc., does not have, and it has never had, the sole and exclusive right to sell and supply pyrophyllite for such purposes. Pyrophyllite for use in connection with the manufacture and production of semivitreous earthenware products can be lawfully used by anyone without the license and consent of the respondent, R. T. Vanderbilt Co., Inc. The issuing of warnings of infringement and threats to sue by the respondent, as hereinabove set forth, were not made in good faith with the intention of bringing such suits, but for the purpose of injuring said competitors and of intimidating them, their agents, customers and prospective customers. By this means the respondent causes said customers and prospective customers of competitors to refuse to buy and to refrain from buying pyrophyllite from said competitors. Said acts and practices also have the tendency and effect of otherwise embarrassing, obstructing, prejudicing and injuring the business of competitors of respondents in the production and sale of pyrophyllite in commerce as herein described.

PAR. 7. The aforesaid acts and practices and course of action on the part of respondents as herein alleged had, and now have, the

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capacity, tendency and effect of (1) restraining, suppressing, or preventing actual and potential competition in the production, sale and distribution of pyrophyllite and semivitreous earthenware products made therefrom; (2) hindering, restricting, and obstructing the free flow of pyrophyllite and semivitreous earthenware products made therefrom in the channels of trade and commerce among and between the various States of the United States so as to deny the public those advantages which would be attained under conditions of normal and unobstructed free and fair competition in said trade and industry; (3) unfairly diverting trade from, and otherwise prejudicing and injuring, respondents' competitors in their respective businesses in the production, sale and distribution of pyrophyllite and semivitreous earthenware products made therefrom; and (4) of otherwise operating as a restraint upon and a detriment to the freedom of fair and legitimate competition in said trade or industry of using, distributing and selling pyrophyllite and semivitreous earthenware products made therefrom in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 8. The aforesaid acts and practices of respondents, as herein alleged, are all to the prejudice of the public and of respondents' competitors, and constitute unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce, within the intent and meaning of the Federal Trade Commission Act.

Count II

The Federal Trade Commission having reason to believe that said respondents, R. T. Vanderbilt Co., Inc., and Standard Mineral Co., Inc., have violated, and are now violating the provisions of section 3 of the act of Congress entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914, commonly known as the Clayton Act, hereby issues this its complaint against respondents and states its charges in respect thereto as follows:

PARAGRAPH 1. For its charges under this paragraph of this count said Commission relies upon the matters and things set out in paragraph 1 of count I of this complaint to the same extent and as though the allegations of said paragraph 1 of said count I were set out in full herein, and said paragraph 1 of said count I is incorporated herein by reference and made a part of the allegations of this count.

PAR. 2. For its charges under this paragraph of this count said Commission relies upon the matters and things set out in paragraph 2 of count I of this complaint to the same extent and as though the allega-

tions of said paragraph 2 of said count I were set out in full herein, and said paragraph 2 of said count I is incorporated herein by reference and made a part of the allegations of this count.

PAR. 3. For its charges under this paragraph of this count said Commission relies upon the matters and things set out in paragraph 3 of count I of this complaint to the same extent and as though the allegations of said paragraph 3 of said count I were set out in full herein, and said paragraph 3 of said count I is incorporated herein by reference and made a part of the allegations of this count.

PAR. 4. In the course and conduct of their business in commerce among and between the various States of the United States and in the District of Columbia, respondent, R. T. Vanderbilt Co., Inc., acting with the cooperation, knowledge and consent of the respondent, Standard Mineral Co., Inc., and to their mutual benefit, profit and advantage, as aforesaid, has made sales and contracts for the sale of pyrophyllite and has offered to grant, and has granted, the privilege or license of the use of its patented process for the admixture of pyrophyllite in connection with the manufacture and production of semivitreous earthenware products, with the condition, understanding and agreement that the pyrophyllite mined or quarried by the respondent, Standard Mineral Co., Inc., and sold and supplied by the respondent, R. T. Vanderbilt Co., Inc., and no other, was and is to be used in connection with said process.

The respondent, R. T. Vanderbilt Co., Inc., has refused, and does refuse, to grant such license under any other condition, agreement or understanding, and its licensees have agreed, and are required by respondents to agree, in consideration of such license, that they shall purchase the pyrophyllite used in connection with said process solely from the respondent, R. T. Vanderbilt Co., Inc., and that they will not purchase or use pyrophyllite acquired from any competitor of said respondent, R. T. Vanderbilt Co., Inc., and pursuant to such agreement or understanding said licensees and purchasers have refused and continue to refuse to purchase pyrophyllite from the competitors of the respondent, R. T. Vanderbilt Co., Inc.

The effect of such license agreements, sales and contracts for sale, upon such condition, agreement and understanding may be, is, and has been to substantially lessen competition or tend to create a monopoly in said respondents in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 5. The aforesaid acts of respondents constitute a violation of the provisions of section 3 of the hereinabove mentioned act of Congress entitled "An Act to supplement existing laws against unlawful

restraints and monopolies and for other purposes," approved October 15, 1914, and commonly known as the Clayton Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act and of an act of Congress approved October 15 A. D. 1914, entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes", and amendments thereto, the Federal Trade Commission, on November 30 A. D. 1938, issued and thereafter served its complaint in this proceeding upon the respondents, R. T. Vanderbilt Co., Inc., and Standard Mineral Co., Inc., charging them with the use of unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce, in violation of the provisions of the Federal Trade Commission Act, and with acts and practices resulting in substantial lessening of competition and tending to create a monopoly in said respondents, in commerce, in violation of the provisions of section 3 of said act of Congress approved October 15 A. D. 1914. After the issuance of said complaint and the filing of a joint answer by the respondents, testimony and other evidence in support of the allegations of the complaint were introduced by John R. Phillips, Jr., attorney for the Commission, and evidence in opposition to the allegations of the complaint was introduced by Frank E. Barrows, attorney for the respondents, before Arthur F. Thomas, a trial examiner of the Commission theretofore duly designated by it to serve in this proceeding, and said testimony and other evidence were duly recorded and filed in the office of the Commission.

Thereafter the proceedings regularly came on for final hearing before the Commission on the said complaint, the answer thereto, the testimony and other evidence, the report of the trial examiner thereon and exceptions to said report, briefs in support of the complaint and in opposition thereto, and oral argument of the aforesaid attorneys. And the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the public interest and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, R. T. Vanderbilt Co., Inc., is a corporation organized under the laws of the State of New York, with its principal office located at 230 Park Avenue, in the city and State of New York.

Respondent, Standard Mineral Co., Inc., is a corporation organized under the laws of the State of North Carolina, with its principal office located at 230 Park Avenue, in the city and State of New York.

PAR. 2. Respondent, Standard Mineral Co., Inc., is now, and for a number of years last past, has been engaged in the business of mining or quarrying, at Hemp, N. C., pyrophyllite, a hydrous silicate of aluminum, used extensively in the ceramic field, particularly in the production of semivitreous earthenware bodies.

PAR. 3. Respondent, R. T. Vanderbilt Co., Inc., is engaged in the sale and distribution of minerals and chemicals, and is the sole sales agent of respondent, Standard Mineral Co., Inc.

Respondent, R. T. Vanderbilt Co., Inc., owns the majority of the issued preferred voting stock of respondent, Standard Mineral Co., Inc. Both respondents have the same president and treasurer, who are also directors in both corporations, and both corporations have offices at the same address. Respondent, R. T. Vanderbilt Co., Inc., controls and dominates the business policies and activities of respondent, Standard Mineral Co., Inc.

PAR. 4. Respondent, Standard Mineral Co., Inc., sells and distributes pyrophyllite mined or quarried by it to purchasers thereof located in various States of the United States and in the District of Columbia.

PAR. 5. Respondents, in the conduct of their business, have been and now are in active, substantial competition with other corporations and with individuals and partnerships engaged in the production, sale and distribution of pyrophyllite in commerce between and among various States of the United States and in the District of Columbia.

PAR. 6. Respondents' total sales of pyrophyllite during the years 1935 to 1938, inclusive, were: 15,660 tons in 1935; 22,136 tons in 1936; 22,972 tons in 1937, and 18,494 tons in 1938. Of this tonnage its sales to the ceramic industry for the respective years were: 2,752 tons in 1935; 3,862½ tons in 1936; 5,516 tons in 1937, and 5,740½ tons in 1938. Most, if not all of these shipments to the ceramic trade were made to customers located in States other than the State of North Carolina, and most, if not all, were for use under the Sproat patents.

The sales of pyrophyllite by the Carolina Pyrophyllite Co., Inc., which started in business in 1936, had reached by 1937, a monthly total of 500 tons, practically all of which was to the ceramic trade. Its sales gradually increased until, in February, 1940, they amounted to approximately 1,000 tons a month of which about 75 percent was

sold to the ceramic trade. These sales were, in large part, made to customers located in States other than the State of North Carolina.

The Pyrophyllite Talc Products Co. started business in 1937. The only sale of pyrophyllite made by this company to a ceramic manufacturer located in a State other than the State of North Carolina was one of two tons to the Superior Ceramic Corporation, of Anderson, Ind. It sells to manufacturers located in North Carolina approximately one carload a month. In February 1940, its total sales were 26 carloads, but there is no evidence to show the amount of the tonnage or the destination of the shipments.

PAR. 7. Pyrophyllite has been used for 80 years or more in the manufacture of ceramic products, but only in recent years has it become an important raw material. The only deposits of pyrophyllite in the United States which have been developed in commercial quantities are located in California and North Carolina, in which latter State are the Hemp Staley and Glendon deposits. At the time of the issuance of the complaint herein the Hemp deposits were operated by respondent, Standard Mineral Co., Inc.; the Staley deposits by Carolina Pyrophyllite Co., Inc., and the Glendon deposits by Pyrophyllite Talc Products Co. No sales from California deposits are shown to have been made.

PAR. 8. Respondent, R. T. Vanderbilt Co., Inc., acquired by assignment from Ira Elmer Sproat Letters Patent No. 1984163, entitled "Earthenware Body," issued December 11, 1934; Letters Patent No. 2068154 entitled "Earthenware Body," issued January 19, 1937, and a reissue of Patent No. 1984163 under date of November 10, 1937, as Re. 20555, entitled "Earthenware Bodies." These patents cover semivitreous earthenware bodies composed of pyrophyllite and a number of other ingredients.

PAR. 9. The first Sproat patent, No. 1984163, contemplates use of the following ingredients: Pyrophyllite, Georgia or South Carolina kaolin, ball clay, feldspar, and flint; the second Sproat patent No. 2068154 contemplates use of the following ingredients: Flint, feldspar, ball clay, Georgia kaolin, pyrophyllite, whiting, magnesite, lime-bearing talc and malacolite; the reissue of the first patent, numbered Re. 20555, comprises the following ingredients: Flint, feldspar, ball clay, Georgia Kaolin, pyrophyllite, whiting, lime-bearing talc and malacolite. None of these patents grant the exclusive right to the use of pyrophyllite in the manufacture of semivitreous earthenware. Pyrophyllite is but one of a number of ingredients used in producing the semivitreous earthenware bodies covered by the patent.

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The Felspathic Research Corporation is the holder of what is known as the "Kraner Patent," No. 2075445. Application for this patent was filed August 27, 1932, and Letters Patent were issued thereon, March 30, 1937, entitled "Method of Forming Ceramic Bodies." This patent contemplates the use of pyrophyllite in the production of vitreous bodies, and two formulae are included in the letters patent, to cover the manufacture of different types of bodies. The first comprises the following ingredients: Basalt, pyrophyllite, talc, ball clay, china clay, mica, whiting, and feldspar. The second comprises the following ingredients: Kentucky ball clay, Kentucky ball clay (dark special), Georgia china clay, pyrophyllite, talc, and whiting.

PAR. 10. Pyrophyllite is one of a number of ingredients involved in the manufacture of vitreous earthenware bodies, and there is nothing in the Sproat patents giving exclusive right to use this product in such manufacture, nor do these patents grant the exclusive right to mine or sell this product. Patents have been granted to others involving the use of pyrophyllite in combination with other ingredients in the manufacture of vitreous earthenware bodies, as instanced by the Kraner patent. A letter to the Vanderbilt Co. from its patent attorneys, dated January 5, 1935, states:

Since the sale of pyrophyllite to a tile company is not in itself an infringement of the patent, the liability of the seller is that of contributory infringer in the event the purchaser uses the pyrophyllite in a manner which infringes the patent.

In another letter to the Vanderbilt Co. from its attorneys, dated August 4, 1936, it is stated:

All of the claims of your patent No. 1984163 are directed to the earthenware product. Pyrophyllite is an unpatented and unpatentable commodity. The production of the product patented by your patent involves the use of pyrophyllite, but the mere purchase or sale of pyrophyllite does not involve direct infringement of your patent. Your patent is infringed only by the making, using, or selling of the patented earthenware product.

In another letter, dated November 19, 1939, the attorneys state:

In the particular situation here involved, I think you should avoid reference, in letters to the trade, to infringement by the use of pyrophyllite purchased elsewhere and should offer to grant licenses on reasonable terms. You can sell pyrophyllite on the basis that the purchaser gets a license under the patent for all pyrophyllite he buys from you, but should avoid what might prove to be an unfortunate attempt to make licenses depend solely upon the purchase of pyrophyllite from you.

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PAR. 11. Respondents sought to use the Sproat patents to control the pyrophyllite market and to secure a monopoly in the production and sale of pyrophyllite. The report of the directors of respondent, Standard Mineral Co., Inc., for the period from April 1, 1931, to March 31, 1932, contains the following statement:

Our efforts to develop new uses for our products are progressing as well as can be expected, and of particular interest is the fact that at least one important consumption will be controlled through patents owned by our sales agent.

In order to secure a monopoly in themselves in the sale of pyrophyllite to be used in the manufacture of semivitreous earthenware, respondents have acted in concert and cooperation to restrict and restrain competition in said product by means of the letters described in paragraph 12 hereof and the acts and practices of respondent Vanderbilt Co. herein set forth.

PAR. 12. Respondent, Vanderbilt Co., acting in concert and cooperation with respondent, Standard Mineral Co., Inc., obtained from its patent attorneys drafts of letters to be sent by it to manufacturers of ceramic bodies and to producers and distributors of pyrophyllite. The letter from the attorneys in which the said drafts were enclosed appears in evidence, but the drafts do not. However, the attorneys quote said drafts in their briefs filed in this proceeding, as follows:

Proposed letter to National Tile Co.:

We are writing to call your attention to our United States Letters Patent No. 1934163 granted December 11, 1934, entitled "Earthenware Body."

We are informed that you are using pyrophyllite in the manufacture of earthenware bodies such as covered by this patent. We request that you discontinue any such infringement and assure us that our rights will be respected.

Proposed letter to various tile companies which are not now infringing:

We are writing to call your attention to our United States Letters Patent No. 1934163 granted December 11, 1934, entitled "Earthenware Body," and relating to the production of semivitreous earthenware bodies with the use of pyrophyllite admixed with clay.

We are prepared to sell you pyrophyllite for use in connection with this patented invention and we are writing to advise you of our rights in this regard so that you may not unknowingly incur liability for infringement through use of pyrophyllite purchased elsewhere for use in accordance with our patented invention.

Proposed letter to the Talc Mining & Milling Co.:

We are writing to call your attention to our United States Letters Patent No. 1934163 granted December 11, 1934, entitled "Earthenware Body."

We understand you are now selling pyrophyllite to the ceramic trade for use in making earthenware bodies such as covered by this patent. Inasmuch as the sale of pyrophyllite for use in making the patented products constitutes con-

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tributory infringement and makes the contributory infringer liable equally with the direct infringer, we are writing you to advise you of our rights in this matter, which we assume you will want to respect to the end that unnecessary litigation may be avoided.

* * * * *

Respondent, Vanderbilt Co., on January 7, 1935, sent the following letter to the National Tile Co.:

DEAR SIRs: We are writing to call your attention to our United States Letters Patent No. 1984163 granted December 11, 1934, entitled "Earthenware Body" and relating to the production of semivitreous earthenware bodies with the use of pyrophyllite admixed with clay.

We are prepared to sell you pyrophyllite for use in accordance with this patented invention and we are writing to advise you of our rights in this regard so that you may not unknowingly incur liability for infringement through use of pyrophyllite purchased elsewhere for use in accordance with our patented invention.

Shipments of pyrophyllite from us carry with them a license for their use, and if you have been using, in accordance with our patent pyrophyllite not bought from us, we request that you discontinue such infringement and we shall be glad to have your assurance that our patent rights will be respected.

Other letters, identical with the foregoing except for the omission of the third paragraph, were sent by respondent, Vanderbilt Co. to 10 other manufacturers of ceramic products located in New York, New Jersey, Georgia, and Ohio. With each of said letters was enclosed a copy of United States Letters Patent No. 1984163.

On January 14, 1935, the Vanderbilt Co. sent a letter to Franklin Tile Co., Lansdale, Pa., in which it is stated:

Every carload of PYRAX pyrophyllite that we ship you automatically carries with it a license for use under the terms of our U. S. Patent No. 1984163.

Typical of the letter sent by the Vanderbilt Co. on January 7, 1935, to producers and distributors of pyrophyllite, is the following:

Gerhardt Talc Corporation,
Stanley, N. C.

DEAR SIRs: We think we should call to your attention our United States Letters Patent No. 1984163 granted December 11, 1934, entitled "Earthenware Body."

We understand you contemplate selling pyrophyllite to the ceramic trade for use in making earthenware bodies such as covered by this patent.

Inasmuch as the sale of pyrophyllite for use in making the patented product constitutes contributory infringement and makes the contributory infringer liable equally with the direct infringer, we are writing you to advise you of our rights in this matter, which we assume you will want to respect, to the end that unnecessary litigation may be avoided.

In November 1937, subsequent to the reissue of the first Sproat patent, respondent, Vanderbilt Co., in accordance with draft prepared by its patent attorneys, sent to seventeen manufacturers of

ceramic products located in New York, New Jersey, Pennsylvania, West Virginia, Indiana, Ohio, and Georgia, the following letter:

We are writing to call to your attention United States Letters Patent Reissue No. 20555 reissued November 16, 1937, entitled: "Earthenware Bodies," relating to the production of semivitreous earthenware bodies with the use of pyrophyllite, clay and calcium compound. We are prepared to sell you pyrophyllite for use in producing the products of this patent.

A copy of the letters patent referred to was enclosed in each of these letters.

The respondent did not follow the draft of letter prepared by its patent attorneys to be sent to National Tile Co., but, acting on its own initiative, stated:

* * * If you have been using in accordance with our patent pyrophyllite not bought from us, we request that you discontinue such infringement * * *.

PAR. 13. After receiving the letters described in paragraph 12 hereof, a number of manufacturers of ceramic products, because of the implied threat of an infringement suit by the Vanderbilt Co., refused to purchase and did not purchase pyrophyllite produced by competitors of the respondents, although in some instances they stated a preference for the product of such competitors. Some of said manufacturers agreed to purchase the products of respondents' competitors if an indemnity bond were furnished to save them harmless in the event of an infringement suit. Between January 1935 and April 1937 three sales of pyrophyllite were made by competitors of respondents to manufacturers of ceramic bodies, with each of which such indemnity bond was furnished. Two of these bonds also covered any breach of agreement to purchase all pyrophyllite used in connection with the Sproat patents from respondents.

PAR. 14. Respondent, Vanderbilt Co., acting in concert and cooperation with respondent, Standard Mineral Co., Inc., has assumed in the letters described in paragraph 12 hereof, that the manufacturers of ceramic products will be confined to the use of respondent's patents in the manufacture of semivitreous earthenware bodies, and, either directly or by implication and innuendo has:

(a) Falsely represented that by reason of its ownership of the Sproat patents it has the sole and exclusive right to sell and supply pyrophyllite for use in connection with the manufacture and production of semivitreous earthenware bodies, and that no one has the right to use pyrophyllite in such manufacture without the license or consent of said respondent.

(b) Warned customers and prospective customers of respondents' competitors that the use by them in the manufacture of semivitreous earthenware of pyrophyllite purchased from such competitors con-

stitutes an infringement of the Sproat patents, and threatened such manufacturers with infringement suits in the event of such use.

(c) Denied the use of its Sproat patents to manufacturers of semi-vitreous earthenware unless the pyrophyllite to be used by them in such manufacture is purchased from respondents.

PAR. 15. The Sproat patents were acquired by respondent, Vanderbilt Co., for the purpose of securing a monopoly in the sale of pyrophyllite to be used in the manufacture of ceramic products, and not for the purpose of protecting it in the manufacture of such product. There is nothing disclosed in the record indicating that respondent ever manufactured ceramic products or contemplated such manufacture.

The respondents have refused to grant licenses under the Sproat patents except to purchasers from them of pyrophyllite, and have attempted to restrict such licenses to the manufacture of earthenware bodies containing pyrophyllite acquired from them. Sales by respondents of pyrophyllite to companies producing semivitreous earthenware and accompanying licenses to use the Sproat patents, were made upon the condition and understanding that the buyers would not use or purchase pyrophyllite from competitors of the respondents, and for the purpose of monopolizing commerce in pyrophyllite.

The letters described in paragraph 12 hereof were not sent in good faith for the purpose of protecting the rights of the Vanderbilt Co. in connection with the manufacture of such products; neither were said letters sent for the purpose of obtaining a financial return from said patents by licensing the use thereof. They were sent for the purpose of carrying out respondents' policy as expressed in the report of respondent Standard Mineral Co., Inc., referred to in Paragraph 11 hereof, that "One important consumption will be controlled through patents owned by our sales agent," and with the purpose and intent of diverting trade in pyrophyllite to respondents from their competitors, and of creating a monopoly in respondents in the sale of pyrophyllite.

PAR. 16. The acts and practices of the respondents as herein set forth have and had the tendency and effect of stifling, suppressing, eliminating, preventing, and destroying competition between said respondents and their competitors in the sale and distribution of pyrophyllite in commerce between and among various States of the United States.

CONCLUSION

The acts and practices of the respondents, as set forth in the foregoing findings as to the facts, under the circumstances therein, set

forth, are to the prejudice of the public and of respondents' competitors and constitute unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act; and said acts and practices tend to, and do, substantially lessen competition and create a monopoly in respondents, in commerce, in violation of the provisions of section 3 of an act of Congress approved October 15, 1914, entitled "An act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," and the amendments thereto.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the joint answer of the respondents, the testimony and other evidence, the report of the trial examiner thereon and exceptions to said report, briefs in support of the complaint and in opposition thereto, and oral argument by the attorney for the Commission and the attorney for respondents, and the Commission having made its findings as to the facts and its conclusion that the respondents have violated the provisions of the Federal Trade Commission Act and the provisions of section 3 of an act of Congress approved October 15 A. D. 1914, entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes" and the amendments thereto.

It is ordered, That the respondents, R. T. Vanderbilt Co., Inc., and Standard Mineral Co., Inc., their officers, directors, representatives, agents, and employees, jointly or severally, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of pyrophyllite in commerce, as "commerce" is defined in the Federal Trade Commission Act, shall forthwith cease and desist from.

1. Directly or by implication or innuendo, either orally or by letters, circulars or any other means, representing that the Sproat patents, or any other patent owned or controlled by the respondents, or either of them, confer upon the respondents, or either of them, the exclusive right to use pyrophyllite in the manufacture of semivitreous earthenware bodies, or that said patents confer the exclusive right upon the respondents, or either of them, to sell or supply pyrophyllite to be used in the manufacture of semivitreous earthenware bodies.

2. Directly, or by implication or innuendo, either orally or by letters, circulars, or any other means, threatening any person, firm or corporation with patent infringement or damage suit, or other legal

action, in bad faith, for the purpose of diverting the trade of any competitor to the respondents.

3. Licensing the use of the Sproat patents, or any other patent owned or controlled by the respondents, or either of them on the condition, agreement, or understanding that the licensee shall purchase from the respondents, or either of them, the pyrophyllite used in the process covered by any of said patents.

4. Licensing the use of the Sproat patents, or any other patent owned or controlled by the respondents, or either of them, upon the condition, agreement or understanding that the licensee shall not purchase or procure from a competitor of respondents the pyrophyllite used in the process covered by any of said patents.

5. Making any sale, or contract, or agreement for sale, of prophylite, on the condition, agreement, or understanding that the purchaser thereof shall not use, in the manufacture of semivitreous earthenware, pyrophyllite purchased from or supplied by a competitor of respondents.

It is further ordered, That the respondents shall, within 60 days after service upon them 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 this order.

IN THE MATTER OF
POST INSTITUTE SALES CORPORATION, POST INSTITUTE,
LOUIS J. STERN AND HELMUTH M. KIESEWETTER

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

Docket 4129. Complaint, May 7, 1940—Decision, Dec. 16, 1941

Where a corporation engaged in interstate sale and distribution of the "Ultrazol Scalp Treatment," consisting of Ultrazol Hair Bath, Ultrazol Pituitary Fluid, and Ultrazol .33, together with the manufacturer thereof who was its president, manager, and majority stockholder; by means of advertisements disseminated through the mails, newspapers, and periodicals, and circulars, leaflets, pamphlets, and other advertising literature, directly and by implication—

- (a) Represented that the process of keratinization interferes with the natural growth of hair and prevents the free emergence of new hair, that insufficiency of pituitary secretion at the hair root causes abnormal loss of hair, faded hair, and other hair troubles, and that use of their said preparations, either singly or in combination, would remove keratin epidermal tissue and cause their pituitary content to penetrate to the hair roots and stimulate or revive the growth of hair; and
- (b) Represented that the use of their preparations, either singly or in combination, would stop abnormal loss of hair, cause fuzz to develop into mature hair, cause dull, faded hair to become brilliant, normalize dry or oily scalp, check premature graying, restore natural color to the hair, and be effective in removing or curing dandruff;

The facts being that said preparations had no therapeutic value in the treatment of any normal condition of hair or scalp and the only benefit which might be obtained from their use was the possible counterirritant action supplied by massage on application thereof, keratinization of the skin is a normal process and adherence to the scalp of the scaly substance formed thereby, not necessarily a diseased condition, can be removed by a good shampoo medium; shedding of such cells has no significance as respects growth of hair, for which, in any event, external application of pituitary substance would be of no value; and products in question, either singly or in combination, would not bring about the results claimed therefor or remove the scale referred to better than soap and water or any other cleansing agent, and, beyond effecting temporary removal of dandruff scales, did not constitute a cure or remedy for said condition; and

Where said corporation and individual, engaged as above set forth—

- (c) Represented, through the use of the word "Institute" in their trade and corporate names and in various forms of advertising, that they were a scientific organization formed to promote learning and research, and furthered such misrepresentation by such statements as "After twelve years of research Post Institute presents Ultrazol, a new hair discovery," and "The ethics of the Institute preclude exaggerated claims" when in fact "Post