

IN THE MATTER OF
DAVIDSON ENAMEL COMPANY

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

Docket 4001. Complaint, Jan 27, 1940—Decision, May 12, 1942

Where a corporation, engaged in the manufacture and interstate sale and distribution of an interior wall covering which consisted of small unit metal plates covered with a vitreous enamel such as that commonly applied to bathtubs, kitchen sinks, etc., and which, when applied to a wall as contemplated, presented an appearance practically identical with that of glazed clay tile, and which it particularly recommended for modernizing bathrooms and kitchens in old buildings because it could be used where the greater weight of clay tile might impose undue strain; in advertisements, folders, and circulars, and in periodicals and newspapers of general circulation—

Represented and described its said product as "Veos Tile" and "Veos Porcelain Tile," "Veos Porcelain Wall Tile" and "Veos Porcelain on Steel Wall Tile"; the facts being that its said product was not a "porcelain tile" or one composed entirely of porcelain—a homogeneous clay product capable of being self-sustaining through the forming and firing process and matured at temperatures which would be destructive to the metal base to which said corporation applied its vitreous enamel—nor adequately and correctly described by word "tile," namely, a baked clay product and not a metal one, but was, as above set forth, a steel or metal shape to which had been applied a thin, opaque glass-like surface of vitreous enamel;

With effect of misleading a substantial portion of the purchasing public into the mistaken belief that such statements were true, and thereby causing it to purchase substantial quantities of said product:

Held, That such acts and practices, under the circumstances set forth, were all to the prejudice and injury of the public, and constituted unfair acts and practices in commerce.

Before *Mr. Miles J. Furnas* and *Mr. Randolph Preston*, trial examiners.

Mr. Randolph W. Branch for the Commission.

Miller, McManus, Hagerty & Shoemaker, of Toledo, Ohio, for respondent.

COMPLAINT

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 Davidson Enamel Co., a corporation, hereinafter referred to as respondent, has violated the provisions of said act, and it appearing to the Commission that a proceeding by it in respect thereto would be in the public interest,

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hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Davidson Enamel Co., is a corporation, organized under the laws of the State of Ohio, and having its principal office and place of business at Clyde, Ohio.

PAR. 2. Respondent is now, and has been for more than 1 year last past, engaged in the business of manufacturing, distributing and selling a certain interior wall covering described by respondent as "Tile" or "Porcelain Tile." Respondent causes and has caused its said product, when sold, to be transported from its aforesaid place of business in the State of Ohio to purchasers thereof located in various States of the United States other than the State of Ohio and in the District of Columbia. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in commerce in said interior wall covering among and between the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of its said business, and for the purpose of inducing the purchase of its said interior wall covering, respondent has made, by means of advertising folders and circulars and by means of advertisements inserted in magazines and newspapers having a general circulation throughout the various States of the United States, claims and representations concerning the composition of its product. Among and typical of the claims and representations so made are the following:

"Veos Tile"

"VEOS PORCELAIN WALL TILE"

"Veos Porcelain Tile"

"The advantages of genuine porcelain are well known—but VEOS Porcelain Tile—is comparatively new."

"VEOS Porcelain on Steel WALL TILE"

PAR. 4. Through the use of the statements, representations, and designations hereinabove set forth, and others similar thereto not herein set out, all of which purport to be descriptive of the said interior wall covering and its composition, respondent directly and by implication has represented that the said interior wall covering is a "tile" or "porcelain tile," or is composed of porcelain on steel.

PAR. 5. The aforesaid representations made by respondent, directly and by implication, with respect to its product and the composition thereof, are misleading and untrue. The word "tile," standing alone and without descriptive words, is generally understood in various trades and by the general public to mean a hard, homogeneous clay product which has been baked in kilns and, in its final form, shaped

into comparatively small sized units; "porcelain" is similarly understood to mean a fine, baked, homogeneous earthenware product. Respondent's product consists of a vitreous or glassy enamel applied to a steel base. Such enamels, when fused at high temperatures to metal bases, acquire a finish which has many qualities desirable where a hard, durable and easily cleaned surface is to be obtained. Articles such as refrigerators, bath tubs, lavatories, and kitchen sinks made of metal to which such enamels have been so fused, are understood and accepted by various trades and the general public as "porcelain enamel," where the surface, as does that of the respondent's product, possesses many of the qualities of porcelain. Such a surface, however, is not porcelain. Respondent's product is not "tile" as that word, in the absence of other descriptive words, is generally understood in various trades and by the general public, nor is it a "porcelain tile."

PAR. 6. The use by the respondent of the foregoing false and misleading statements, representations and designations with respect to its interior wall covering, disseminated as aforesaid, has had, and now has, the capacity and tendency to, and does, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such false and misleading statements, representations and designations are true, and causes and has caused a substantial portion of the purchasing public, because of such erroneous and mistaken belief, to purchase substantial quantities of the said product.

PAR. 7. The aforesaid acts and practices of the respondent, as herein alleged, are all to the prejudice of the public, and constitute unfair acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on January 27, 1940. issued and subsequently served its complaint in this proceeding upon respondent, Davidson Enamel Co., a corporation, charging it with the use of unfair acts and practices 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 and in opposition to the allegations of said complaint were introduced before an examiner of the Commission theretofore duly designated by it, 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 Com-

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mission on the said complaint, the answer thereto, testimony and other evidence, briefs in support of and in opposition to the complaint, and oral arguments of counsel; and the Commission, having duly considered the matter 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. Respondent, Davidson Enamel Co., is a corporation, organized under the laws of the State of Ohio and having its principal office and place of business at Clyde, Ohio.

PAR. 2. Respondent is now, and for several years last past has been, engaged in the manufacture, sale, and distribution of an interior wall covering designated by it under various names, including "Veos Tile" and "Veos Porcelain Tile." Respondent causes, and has caused, said product, when sold, to be transported from its place of business in the State of Ohio to purchasers located in various States of the United States other than the State of Ohio and in the District of Columbia. Respondent maintains, and has maintained a course of trade in commerce in said interior wall covering among and between the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of its aforesaid business and for the purpose of inducing the purchase of its said interior wall covering, respondent, by means of advertising folders and circulars and by means of advertisements inserted in magazines and newspapers having a general circulation throughout the various States of the United States, has made claims and representations concerning the composition of its product, among and typical of which are the following:

VEOS TILE
* * *
VEOS PORCELAIN TILE
* * *
VEOS PORCELAIN WALL TILE
* * *

The advantages of genuine porcelain are well known—but Veos Porcelain Tile * * * is comparatively new.

* * *
Veos Porcelain on Steel Wall Tile

PAR. 4. The wall covering sold and distributed by respondent consists of sheet metal surfaced with a vitreous enamel. In fact, the term "Veos," sometimes used by respondent in referring to its product,

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is made up of the initial letters of the words "Vitreous Enamel On Steel." This product is made in small units, standardized in size in multiples of $1\frac{1}{2}$ inches up to a maximum of 6 inches by 12 inches. These shapes are stamped from sheet steel of approximately 20 gage and are put through a pickling or cleaning process to prepare the surface for the application of vitreous enamel. The shapes are then dipped into a liquid containing principally feldspar, blended clays, borax, cryolite, tin oxide and other color oxides according to the color to be obtained, then dried at a temperature of 200° to 300° F., and then baked or fired in a furnace at a temperature of $1,580^{\circ}$ to $1,600^{\circ}$ F. for a few minutes, during which firing the material applied to the surface of the metal becomes fused to that surface. The shapes are then sprayed with a liquid consisting of substantially the same materials as contained in the first coat except for the addition of color oxides to obtain the color desired, again dried as in the case of the first coat, and fired for a few minutes in a furnace at a temperature of $1,540^{\circ}$ to $1,560^{\circ}$ F., which firing fuses the second coat. The result of this process is a metal plate covered with a vitreous enamel such as that commonly applied to bathtubs, kitchen sinks, and other articles in general domestic use, and frequently referred to as porcelain enamel. These shapes are applied by first attaching to the wall to be covered a special composition foundation board which is grooved to form a pattern of raised $1\frac{1}{2}$ -inch squares. The shapes are affixed to this foundation board by covering the back of the shapes with an adhesive and then fitting the curved edges of such shapes into the grooves in the foundation board, after which the joints between the shapes are grouted.

The product made in the manner described is used in the construction of new buildings and in the repair and modernization of old buildings. It is particularly recommended by respondent for modernizing bathrooms and kitchens in old buildings because it is much lighter in weight than clay tile and can be used where the greater weight of clay tile might impose an undue strain upon a building not designed to support heavy weights.

PAR. 5. The surface applied to respondent's product in the aforesaid manner is a ceramic glaze; it is not true porcelain. Porcelain is essentially a clay product which is capable of being self-sustaining through the forming and firing, or maturing process, and must be matured at temperatures above $2,000^{\circ}$ F., which temperatures would be destructive to the metal base to which respondent applies the vitreous enamel. In addition, true porcelain is a homogeneous product, whereas the base of respondent's product is sheet metal to which a vitreous

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enamel approximately 0.012 to 0.020 of an inch in thickness has been fused. However, for a number of years last past manufacturers of various products surfaced with a vitreous enamel similar to that used by respondent have advertised and represented their products as having a porcelain or porcelain enamel finish, and such surfaces have come to be widely accepted and understood by members of the consuming public as porcelain enamel.

PAR. 6. For some thousands of years tiles ordinarily and generally have been made from clay or mixtures of clay shaped into small units and fired so as to obtain a hard, durable, dense, and impervious mass. Tiles have also been made of marble, stone, and other products, but until relatively recent years the usual and principal type of tile has been that made from clay or mixtures of clay. The word "tile," when not accompanied by qualifying words indicating the composition thereof, has been, and is now, understood in the building trade, by architects, and by members of the purchasing public to mean tiles made from clay. When applied to tiles made of materials other than clay or mixtures of clay the term "tile" has been, and is, customarily accompanied by other words descriptive of the composition of the tile, such as "glass tile," "rubber tile," "cement tile," and "linoleum tile."

When applied to a wall in the manner heretofore described respondent's product presents a surface substantially identical in appearance to that presented by a wall finished with glazed clay tile and has the same characteristics of size of units and of grouted joints between units as does a wall finished with glazed clay tile. Respondent's product, however, is not "porcelain tile" because such description designates and describes tile composed entirely of porcelain, whereas respondent's product is in fact a steel or metal shape to which has been fused a thin opaque glasslike surface known as vitreous enamel. Neither does the term "tile" adequately and correctly describe said product because the word "tile," when used without qualifying words, connotes a baked clay product or clay tile and not a metal tile such as respondent's product.

PAR. 7. The use by respondent of the term "tile," without qualifying words descriptive of the base of said product, or of the term "porcelain tile," to designate and describe its interior wall covering has had, and now has, the capacity and tendency to, and does, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such false and misleading statements, representations, and designations are true, and causes, and has caused a substantial portion of the purchasing public, because of such erroneous and mistaken belief, to purchase substantial quantities of said product.

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CONCLUSION

The aforesaid acts and practices of respondent are all to the prejudice of the public and constitute unfair acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

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 an examiner of the Commission theretofore duly designated by it, briefs filed herein, and oral arguments by counsel, and the Commission having made its findings as to the facts and its conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, Davidson Enamel Co., a corporation, its officers, representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of its product designated as "Veos Tile" and by other names, or any substantially similar product under the same or any other name, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the word "tile," either separately or with any other word or words, to designate, describe, or refer to respondent's said product unless in immediate connection or conjunction with the word "tile" other word or words are used which disclose the metal or other base of respondent's said product.

2. Using the word "porcelain," either separately or with any other word or words, to designate, describe, or refer to respondent's said product except in a manner which clearly discloses that the word "porcelain" refers only to the vitreous enamel surface of such product.

It is further ordered, That respondent shall, within 60 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.

Syllabus

IN THE MATTER OF
JAMES MACDONALD, LTD., ET AL.COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 4618. Complaint, Oct. 21, 1941—Decision, May 19, 1942*

Where four corporations and three partners, with principal places of business in Scotland, producers of "Harris Tweed"—distinctive and favorably known cloth or fabric made from pure virgin wool produced in Scotland, spun, dyed and finished in the Outer Hebrides and hand woven by the inhabitants of said islands in their own homes—who had long sold and delivered a substantial part of the product in question in the United States, directly and through certain agents and representatives; and said agents and representatives, who, as competition in "Harris Tweed" developed in the United States, formed a voluntary association known as "Harris Tweed Agents Committee," membership of which always included agents and representatives of some or all of aforesaid producers; in competition, prior to and but for acts and practices below set forth, directly and through their said agents, with each other and with other members of the industry, and holding a dominant position in the substantial trade in said "Harris Tweed" between Great Britain and the United States—

- (a) Entered into and carried out understandings, agreements, combinations and conspiracies with intent and effect of monopolizing trade and suppressing competition in sale of the fabric in question in trade and commerce between Great Britain and the United States; and the several States and in the District of Columbia; and

Where aforesaid producers, with the active cooperation of said agents and representatives and others, and in pursuance of and to effectuate said understandings, etc.—

- (b) Fixed, established and maintained minimum prices, terms, and conditions of sale in connection with the marketing of "Harris Tweed" in the United States; and

Where three of said sales agents, with the active cooperation of producers aforesaid and others, and pursuant to and in order to effectuate said understandings, etc.—

- (c) Inaugurated a plan to fix and maintain prices by clothing manufacturers and resale prices by retailers selling garments made of "Harris Tweed" in the United States, and selected one of their number as their common agent in the United States to enter into agreements with the garment manufacturers and retailers, to the effect that such manufacturers would not sell garments made from "Harris Tweed" purchased from producers and agents involved at prices lower than those fixed by them, or sell to any retailer who would not bind himself similarly to respect the resale prices which they fixed; that the retailers themselves would respect such prices; and that each garment manufacturer and retailer would submit to said common selling agent list of prices at which sales were being made and customers; and